



## REPUBLIC OF VANUATU

### INTERNATIONAL COMPANIES (AMENDMENT) ACT NO. 4 OF 2016

#### Arrangement of Sections

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## REPUBLIC OF VANUATU

**Assent:** 27/06/2016  
**Commencement:** 07/07/2016

### INTERNATIONAL COMPANIES (AMENDMENT) ACT NO. 4 OF 2016

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 INTERNATIONAL COMPANIES ACT [CAP 222]

**1 Subsection 1(1)**

Insert in their correct alphabetical positions:

““beneficial owner” means a natural person who ultimately owns a share or debenture in an international company and who exercises ultimate effective control over the share or debenture even though it may be registered in the name of another entity;”

““immovable property” means a land as defined under the Land Leases Act [CAP 163];”

**2 Subsection 1(1) (definition of “annual fee”)**

Repeal the definition, substitute

““annual registration fee” means the annual registration fee required to be paid under section 112;”

**3 Subsection 1(1) (definitions of “bearer share”, “custodian” and “existing bearer share”)**

Repeal the definitions.

**4 Subsection 1(1) (definition of “long term renewal fee”)**

Repeal the definition, substitute

““long term registration renewal fee” means the fee payable for the renewal of a long term registration;”

**5 Subsection 1(1) (definition of “registered agent”)**

Repeal the definition, substitute

““registered agent” means a person who is at any particular time performing the functions of the registered agent of a company under this Act and who is licensed under the Company and Trust Services Providers Act No. 8 of 2010;”

**6 References to “annual fee”**

Delete “annual fee” (wherever occurring in the Act), substitute “annual registration fee”

**7 References to “long term renewal fee”**

Delete “long term renewal fee” (wherever occurring in the Act), substitute “long term registration renewal fee”

**8 References to “Companies Act [CAP 191]”**

Delete “Companies Act [CAP 191]” (wherever occurring in the Act), substitute “Companies Act”

**9 Paragraphs 3(1)(ca) and (cb)**

Repeal the paragraphs.

**10 Paragraph 10(1)(b)**

Delete the word “lease”, insert “premises”

**11 Paragraph 10(2)(b)**

Delete “lease”, substitute “rent”

**12 Paragraph 10(2)(c)**

Delete “Banking Act [CAP 63]”, substitute “International Banking Act [CAP 280] and the Financial Institutions Act [CAP 254]”

**13 Paragraph 16(1)(a)**

Repeal the paragraph.

**14 Paragraph 17(c)**

Repeal the paragraph, substitute

“(c) exchange bearer shares for registered shares or shares that are to be registered;”

**15 Sections 22, 26A, 26B, 26C, 26D, 59 and 74A**

Repeal the sections.

**16 Subsection 23(1)**

(a) Delete “or bearer”;

(b) Delete “or the bearer share,”

**17 Section 25 (Heading)**

After “registered shares”, insert “and share warrants”

**18 Section 25**

After “registered shares” (wherever occurring), insert “or share warrants”



**19 Section 26**

Repeal the section, substitute

**“26 Exchange of bearer shares and share warrants**

- (1) A share issued to bearer must be exchanged for registered shares on the commencement of this Act.
- (2) Upon failure to comply with subsection (1), the shares issued to bearer is deemed to be beneficially owned by the custodian and the register of shares of the company must be rectified accordingly.”

**20 Subsection 52(4)**

Repeal the subsection.

**21 Paragraph 58(1)(d)**

Delete “,”, substitute “,”

**22 Paragraphs 58(1)(e) and (f)**

Repeal the paragraphs.

**23 Paragraph 79(1)(b)**

Delete “as bearer debentures”, substitute “as registered debentures”

**24 Paragraph 79(1)(c)**

After “debentures” (second occurring), substitute “where the debenture is not issued to bearer”

**25 Subsections 79(8) and 80(9)**

Repeal the subsections.

**26 Subsection 80(10)**

Delete “bearer” (wherever occurring in this section)

**27 Subsection 107(1)**

Delete “to the court to have the name of the company restored to the Commission”, substitute “to the Commission to have the name of the company restored to the Register”

**28 Subsection 107(2)**

Delete “court” (wherever occurring in the subsection), substitute “Commission”

**29 Subsection 107(3)**

Delete “within 3 years immediately following the date of the striking-off,”

**30 Section 112**

Repeal the section, substitute

**“112 Annual registration fee for companies continuing registration under section 6A**

- (1) A company that wishes to continue its registration must pay to the Commission an annual registration fee of US\$300 and the fees set out under paragraph 111(2)(ab), on or before 30<sup>th</sup> June each year.
- (2) A company that fails to make the payment under subsection (1), is liable to a late fee payment of US\$100.00.”

**31 After subsection 118(3)**

Insert

- “(3A) To avoid doubt, when a company registered under this Act transfers shares, debt obligation or other securities in a company incorporated under the Companies Act:
- (a) subsection (3) does not apply in that situation; and
  - (b) such transactions must comply with the Companies Act.”

**32 Subsection 118(5)**

Repeal the subsection, substitute

- “(5) An exemptions granted to a company under this section remains in force until 31 December 2099.”

**33 At the end of section 118**

Add

- “(6) To avoid doubt, subsection (3) does not apply to the transfer of a beneficial or equitable ownership of a company registered under this Act that is a shareholder in a company registered under the Companies Act.”

**34 Section 125**

Repeal the section, substitute

**“125 Register of beneficial owners**

- (1) The Commission is to keep a Register of beneficial owners of companies.
- (2) A person intending to incorporate a company under this Act must disclose to the Commission details of the beneficial owners of the company as the Commission may require.



- (3) The Commission must not incorporate a company under section 5 unless the person applying for incorporation complies with subsection (2).
- (4) A company incorporated before the commencement of this Act must disclose to the Commission details of beneficial owners of the company within 3 months of the commencement of this Act.
- (5) A company must notify the Commission of any change in its beneficial owners within 3 months of the change in ownership and must provide such information of the new beneficial owners as the Commission may require.
- (6) A company that fails to comply with subsections (4) and (5) will be struck off the Register of Companies.
- (7) An agent who:
  - (a) having been informed by the company of the changes in beneficial ownership; and
  - (b) fails to file such changes with the Commission,commits an offence punishable on conviction by a fine not exceeding US\$100,000.

**125A Confidentiality of company records**

- (1) For the purpose of this section, **company records** means records of a company registered under this Act and includes record of:
  - (a) the shareholding in, or beneficial ownership of any share or shares in a company; and
  - (b) the management personnel of such a company; and
  - (c) the business, financial or other affairs or transactions of the company; and
  - (d) the assets or liabilities of such a company; and
  - (e) any other information prescribed by the Commission.
- (2) For the purpose of paragraph (1)(b), **management personnel** means the Directors or any authorised officers or agents of the company.

- (3) Company records are confidential.
- (4) A person must not:
  - (a) disclose; or
  - (b) attempt, offer or threaten to disclose; or
  - (c) induce or attempt to induce other persons to disclose; or
  - (d) incite, abet, counsel or procure any person to disclose; or
  - (e) be involved in any way in the disclosure of,the details of company records of any company registered under this Act.
- (5) A person who contravenes subsection (4) commits an offence punishable, on conviction, by a fine not exceeding US\$100,000 or to imprisonment for a term not exceeding 5 years, or both.
- (6) Despite subsection (4), the Commission or a person authorised by the Commission, may disclose company records if:
  - (a) required to do so by a court of competent jurisdiction under section 125B; or
  - (b) requested by:
    - (i) an officer of a company registered under this Act to which the information requested pertains to or a trustee company for the purpose of complying with the provisions of this Act; or
    - (ii) any person appointed as a liquidator, or by an officer of a company registered under this Act or trustee company in the performance of his or her duties as liquidator or an officer; or
    - (iii) the Financial Intelligence Unit or any other domestic or foreign agency responsible for the prevention of money laundering if the information is required for the purposes of enforcing the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 or any other Act



making provisions in relation to the prohibition or control of money laundering activities, financing of terrorism and other similar offences; or

- (c) necessary to ensure compliance with any provisions of this Act,
- (7) Company records disclosed under subsection (6) are to be disclosed only to the extent as is reasonably required in the circumstance.
- (8) Before making an order for the disclosure of company records in relation to the beneficial ownership of shares in a company, the Court must satisfy itself that:
  - (a) there is prima facie evidence to prosecute the beneficial owners of a company of an offence under the laws of Vanuatu or another country; and
  - (b) the disclosure of the company records would assist in securing a conviction.
- (9) Despite the provisions of this Act, a shareholder is authorised to disclose the identity of the company's beneficial owners.

**125B Court proceedings disclosing company records**

- (1) If a company record under section 125A is likely to be disclosed in a Court proceeding, the Court must:
  - (a) ensure that such disclosure is not made in open Court; and
  - (b) not disclose any confidential company information in any written judgement, orders or minutes of the proceeding.
- (2) Subject to subsection (1), civil or criminal proceedings relating to international companies commenced in any Court:
  - (a) under the provisions of this Act; or
  - (b) for the purpose solely of determining the rights or obligations of officers, members or holders of debentures; or
  - (c) relating to any appeal from the proceedings referred to in paragraphs (a) or (b),

may be held in an open Court.”

**35 Paragraphs 131(2)(a), (b), (c), (d) and (e)**

Repeal the paragraphs.