

# UNIVERSAL UBO FORM

## Declaration of Ultimate Beneficial Owner(s) (“UBOs”)

### Introduction:

This communication provides an important update regarding the disclosure requirements for Ultimate Beneficial Owners (UBOs) in Vanuatu, as mandated by current legislation.

1. INTERNATIONAL COMPANIES ACT
2. COMPANIES ACT
3. PARTNERSHIP ACT 4. FOUNDATION ACT

The Vanuatu Financial Services Commission (VFSC) requires a wide range of entities, extending beyond just companies, to disclose their ultimate beneficial owner(s). This is a critical obligation aimed at enhancing transparency and combating financial crimes.

Furthermore, the VFSC is obliged to provide customer due diligence information on UBOs to the Vanuatu Financial Intelligence Unit (VFIU). The VFIU is responsible for closely monitoring UBOs of legal persons or arrangements, operating under the framework of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014.

For clarity, Section 1 of this Act defines a "beneficial owner" as:

*(a) A natural person who ultimately owns or controls the right to or benefits from a fund; or (b) A person who exercises ultimate effective control over a legal person or legal arrangement.*

It is important to note that other legal arrangements registered by the VFSC, which are considered automatically reporting entities, are also required to disclose their ultimate beneficial owner(s). This includes, but is not limited to, Charitable Associations and Trusts.

In accordance with Section 12 (2) (a) to (c) of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014, a reporting entity must conduct a prescribed identification process on:

- (a) a person conducting a transaction;*
- (b) a person on whose behalf a transaction is being conducted; and*
- (c) a beneficial owner, particularly if the reporting entity has reasonable grounds to believe that the person is undertaking a transaction on behalf of another individual or entity.*

Therefore, the Vanuatu Financial Services Commission unequivocally requires all legal entities classified as reporting entities, which include International Companies, Local Companies, Partnerships, Foundations, Charitable Associations and Trusts, to declare their ultimate beneficial owner(s) and provide all related pertinent information as required by the law.

### Definition of Beneficial Ownership

1. **International Companies Amendment Act No. 14 of 2017**, defines ultimate beneficial owner as “... a natural person who is the ultimate owner or ultimate controller of a company.”
2. **Companies Act No. 25 of 2012 (Consolidated Edition)** Part 1 – Preliminary Provisions, Section 1, defines beneficial owner as “... a natural person who is the ultimate owner or ultimate controller of a company. “Controller” of a company means a person who exercises influence, authority or power over decisions about the company’s financial or operating policies, including as a result of, or by means of, a trust, agreement, arrangement, understanding or practice, and “control” has a corresponding meaning.”
3. **Partnership Amendment Act No. 26 of 2018**, in section 1 defines beneficial owner as “... a natural person who ultimately owns or ultimately controls an applicant.”
4. **Foundation Amendment Act No. 20 of 2017**, mentions in “4A Meaning of beneficial owner (1) A beneficial owner of a key person is a natural person who ultimately controls the key person. (2) For the purpose of subsection (1), control means exercising influence, authority or power over the key person, and includes circumstances where the key person is acting as a nominee or proxy on behalf of another person or entity. (3) For the avoidance of doubt, if a key person is acting as a nominee or proxy on behalf of a legal person or legal arrangement, the natural person who ultimately controls the key person is the natural person who: (a) has a legal entitlement to 25% or more of the legal person or legal arrangement by way of ownership of shares or otherwise, including ownership exercised through a chain of ownership; or (b) otherwise exercises control, directly or indirectly, over the legal person or legal arrangement.”

### Powers of the Registrar to Seek Beneficial Ownership Information and requirements on entities to provide Beneficial Ownership to the Registrar

#### **(1) INTERNATIONAL COMPANIES ACT**

Section 35A of the International Companies Amendment Act No. 14 of 2017 provides; “... Commission may require certain information or documents about beneficial owners or members

- (1) Subject to subsection (2), the Commission may, by notice in writing to the registered agent of a company, require the registered agent to provide the Commission with information or documents, or both, specified in the notice within the period set out in the notice.
- (2) The information or documents must relate to:
  - (a) the beneficial owners of the company; or
  - (b) details of the members of the company as contained in its Register of Members.
- (3) If the registered agent:
  - (a) refuses or fails to give the Commission the information or documents required by the Commission;or

- (b) knowingly or recklessly gives the Commission information or documents that are false or misleading;

*the registered agent commits an offence punishable upon conviction by the penalty referred to in subsection (4):*

- (4) *The penalty is:*
  - (a) *if the registered agent is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or*
  - (b) *if the registered agent is a body corporate - a fine not exceeding VT 75 million.*
- (5) *To avoid doubt, this section does not limit section 128B."*

## **(2) COMPANIES ACT**

Section 7A of Companies Act No. 25 (Consolidated Edition) of 2012 provides; *"... Registrar may require certain information or documents about beneficial owners or members*

- (1) *Subject to subsection (2), the Registrar may, by notice in writing to a company, require the company to provide the Registrar with information or documents, or both, specified in the notice within the period set out in the notice.*
- (2) *The information or documents must relate to:*
  - (a) *the beneficial owners of the company; and*
  - (b) *the details of the members of the company as contained in its Register of members; and*
  - (c) *the audited accounting records and the financial statements of the company.*
- (3) *If the company:*
  - (a) *refuses or fails to give the Registrar the information or documents required by the Registrar; or*
  - (b) *knowingly or recklessly gives the Registrar information or documents that are false or misleading,*

*the company commits an offence punishable upon conviction to a fine not exceeding vT75 million. (4)*

*This section does not limit section 180A."*

### **(3) PARTNERSHIP ACT**

Section 55 of the Partnership Act [Cap 92] provides;

*The registrar shall keep at his office in proper books to be provided for the purpose a register and an index of all the limited partnerships registered as aforesaid and of all the statements registered in relation to such partnerships.*

Section 1F of the Partnership Amendment Act No. 26 of 2018 provides;

- (1) *Subject to subsection (2), the registrar may, by notice in writing to a partnership, require the partnership to provide the registrar with information or documents, or both, specified in the notice within the period set out in the notice.*
- (2) *The information or documents must relate to:*
  - (a) *the partnership's integrity, competence, financial standing or organisation; or*
  - (b) *the partnership's compliance with this Act or the Regulations.*
- (3) *If the partnership:*
  - (a) *refuses or fails to give the registrar the information or documents required by the registrar; or (b) knowingly or recklessly gives the registrar information or documents that are false or misleading, the partnership commits an offence punishable upon conviction by a fine not exceeding VT 75 million."*

### **(4) FOUNDATION ACT**

Section 29A of the Foundation Amendment Act No. 20 of 2017 provides; "... Commission may require information and documents

- (1) *Subject to subsection (2), the Commission may, by notice in writing to a foundation, require the foundation to provide the Commission with information or documents, or both, specified in the notice within the period set out in the notice.*
- (2) *The information or documents must relate to:*
  - (a) *the foundation's integrity, competence, financial standing or organisation; or*
  - (b) *the foundation's compliance with this Act or the Regulations.*
- (3) *If the foundation:*
  - (a) *refuses or fails to give the Commission the information or documents required by the Commission; or (b) knowingly or recklessly gives the Commission information or documents that are false or misleading, the foundation commits an offence punishable upon conviction by a fine not exceeding VT 75 million."*

Therefore, VFSC notes that the current definition of UBO in the legislation it administers is sufficient to address the ultimate beneficial owners of entities.

## Who is the UBO?

The **Beneficial Owner** of the entity or company shall be whoever person that ultimately owns or controls an entity or company.

- The Beneficial Owner may be traced through any number of Legal Persons, shareholders, controllers or arrangements of whatsoever kind.
- If two or more natural persons jointly own or control a ratio of capital in the Legal Person, all of them shall be deemed as jointly owners or controllers of such ratio.
- If, after all reasonable means have been taken, no natural person is identified as an ultimate Beneficial Owner, or there is reasonable doubt that any natural person identified as an ultimate Beneficial Owner is the true Beneficial Owner in the Legal Person; then the natural person who controls the Legal Person by other means of control shall be deemed as the Beneficial Owner.

It is important to note that the UBO is not necessarily the shareholder. (For example only, an overseas company called ABC Limited owns 100% of the shares in a company called XYZ Ltd. Bill and Ted each own 50% of the shares in ABC Limited. The UBOs of XYZ Ltd are Bill and Ted (not ABC Limited).

It is a condition of registration and renewal of a certification of registration an entity in the Vanuatu Financial Service Commission that a legal entity owner provides UBO information to the VFSC and updates that UBO information as and when the UBO changes. The VFSC reserves the right to request any legal entity owner to supply documentation and other information to evidence information made in the UBO declaration.

## Documents to Provide to the Registrar of Companies

Below is the list of the documents required of an ultimate beneficial owner of a local company:

- Copy of Police Clearance in colour for country of residence for the last 6 months (to be provided by a foreigner).
- Copy of a valid Identification Card in colour or a valid copy of Passport in colour (foreigner's one has to be certified).
- Past records of criminal convictions (local and foreigner).
- Source of funds (a recent bank statement).
- Proof of residence for last 6 months (which is clearly evident in a utility bill or an internet bill or a phone bill or a bank statement).
- Copy of Share Register for Local Companies
- Copy of Member Register for International Companies

## Ultimate Beneficial Ownership ("UBO") Declaration Form

<b>Registration Number (if known)</b>	
<b>Entity Name</b>	
<b>Shareholder Name (if applicable)</b>	
<b>% shares in the entity</b>	

### 1.1 The declaration of the Individual shareholder

I/We hereby declare that the individual shareholder(s) is the Ultimate Beneficial Owner of the Company and there is no more UBO(s) of the Company other than the individual shareholder(s) of the Company.

### 1.2 Details of Ultimate Beneficial Owner(s) (UBO) – Individuals through ownership/control

For a Company, a UBO is any individual who (Please tick the type of UBO):

- Ultimately owns or controls whether directly or indirectly 25% or more of the shares or voting rights in the business;
- Holds the right, directly or indirectly, to appoint or remove a majority of the board of directors;
- Has the right to exercise, or actually exercises, significant influence or control over the corporate body;
- Exercises ultimate control over the management; or
- Controls the corporate body.

#### 1.2.1 Date on which the person became a Beneficial Owner

Personal Details			
First Name:		Last Name:	
Passport No or Identification Card No.:		Passport or Identification Card Issue Date:	
Nationality:		Passport or Identification Card Expiry Date:	
Date of Birth:		Place of Birth:	
Passport or Identification Card Place of Issue / Issuing Authority:			

Address Details in Vanuatu			
Area:		Street:	
Building Name/No.:		City:	
P.O.Box No.:			
Residence Phone:			
Mobile No. 01:		Mobile No. 02: (Optional)	

Address Details in Home Country (if applicable)			
Area:		Street:	
Building Name/No.:		City:	
P.O.Box No.:			
Residence Phone:			
Mobile No. 01:		Mobile No. 02: (Optional)	

## UBO DECLARATIONS AND UNDERTAKINGS

- I/We hereby declare that the information provided in this declaration is true and accurate and if such information changes, I/We will promptly notify the VFSC within 25 days of such amendment or change.
- I/We hereby undertake to notarize and/or attest any document or passport copy submitted along with this declaration, if required by the VFSC.
- I/We acknowledge that if any information provided by me/us is subsequently found to be untrue, inaccurate or misleading the VFSC may suspend or terminate our registration.
- I/We hereby authorise the VFSC to make any enquiries from any person or entity, it may deem necessary in connection with this declaration.
- I/We understand that the VFSC may decline my declaration without being required to provide any reason

Name:		Date:	
Signature:			

### Notes:

- Please submit a separate Declaration Form for each UBO should there be more than one individual who falls under the definition of a UBO.