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## CHAPTER 261

# VANUATU INTERACTIVE GAMING

Act 16 of 2000  
Act 49 of 2000  
Act 30 of 2002  
Act 10 of 2008  
Act 2 of 2010  
Act 19 of 2013  
Act 22 of 2017

### ARRANGEMENT OF SECTIONS

#### **PART 1 – PRELIMINARY**

1. Interpretation
- 1A. Meaning of beneficial owner
2. Interactive game

#### **PART 2 – LICENCES FOR INTERACTIVE GAMING** **Division 1 – Offence for unlicensed interactive gaming**

3. Licensees to conduct interactive gaming

#### **Division 2 – Licensing procedure**

4. Application for licence
5. Application to be granted or refused
6. Investigation in relation to application
7. Existing operators taken to be licensed

#### **Division 3 – Conditions and form of licence**

8. Conditions of licence
9. Licence fee
10. Form of licence

#### **Division 4 – Suspension, revocation and surrender**

11. Suspension and revocation of licence
12. Immediate suspension
13. Effect of suspension and revocation
14. Surrender of licence

#### **Division 5 – Other general provisions**

15. Renewal of licence
16. Licence not to be transferred
17. Mortgage, charge or encumbrance over licence

#### **PART 3 – COMPLIANCE REQUIREMENTS**

18. No internet gambling by persons under 18
19. Approval of interactive games
20. Approval of control systems
21. Change of control system
22. Approval of equipment

23. Financial institution accounts
24. Notification of changes
25. Records
26. Submission of reports
27. Audit
28. Special audit
29. Investigation of licensee
- 29A. Regulator may require information and documents relating to licensee
- 29B. On-site inspections
- 29C. Regulator may request information and documents

#### **PART 4 – INTERACTIVE GAMING TAX**

30. Liability to tax
31. Payment and returns for calculation of tax
32. Penalty for late payment and underpayment
33. Recovery of amounts

#### **PART 5 – REGULATOR**

34. Functions and powers of Regulator
35. Code of practice
36. Complaints
37. Appointment of inspectors
38. Reports
39. Delegation of functions and powers
40. Contracting out services and work

#### **PART 6 – MISCELLANEOUS**

41. *(Repealed)*
42. Disclosure of confidential information
- 42A. Disclosure to foreign government agency
- 42B. Indemnity from liability
- 42C. Guidelines
43. Forfeiture
44. Regulations
45. Application of certain other Acts

## VANUATU INTERACTIVE GAMING ACT

**An Act to regulate interactive gaming, and for related purposes.**

### **PART 1 – PRELIMINARY**

#### **1. Interpretation**

In this Act, unless the contrary intention appears:

“approved form” means a form approved by the Regulator for use under this Act;

“beneficial owner” has the meaning given by section 1A;

“code” means the code of practice in force under section 35;

“commencement” means the commencement of this Act;

“conduct” means control or operate;

“confidential information” means information that is supplied to or obtained by the Regulator in the performance of his or her functions or the exercise of his or her powers under this Act, but does not include information that:

- (a) can be disclosed under any provision of this Act; or
- (b) is already in the public domain; or
- (c) consists of aggregate data from which no information about a specific person or business can be identified;

“control system” means a system of internal controls, and administrative and accounting procedures for the conduct of interactive games by a licensee;

“controller” of an applicant for a licence or a licensee means a person who exercises influence, authority or power over decisions about the applicant’s or licensee’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;

“Customs officer” has the same meaning as in the Customs Act [Cap. 257];

“domestic regulatory authority” means a body or agency established by or under a law of Vanuatu that:

- (a) grants or issues under that law or any other law licences, permits, certificates, registrations or other equivalent permissions; and
- (b) performs any other regulatory function related to a matter referred to in paragraph (a), including developing, monitoring or enforcing compliance with standards or obligations prescribed by or under that law or any other law;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 4 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

“foreign government agency” means:

- (a) a body or agency established by or under a law of a foreign country; or
- (b) an arm, ministry, department or instrumentality of the government of a foreign country; or
- (c) a body or agency of a foreign country set up by administrative act for governmental purposes;

“foreign serious offence” means:

- (a) an offence against a law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the laws of Vanuatu, for which the maximum penalty is imprisonment for at least 12 months; or
- (b) an offence prescribed by the regulations;

“foreign tax evasion offence” means conduct that:

- (a) amounts to an offence against a law of a foreign country; and
- (b) relates to a breach of a duty relating to a tax imposed under the law of the foreign country (whether or not that tax is imposed under a law of Vanuatu); and
- (c) would be regarded by the courts of Vanuatu as an offence of fraudulent evasion of tax for which the maximum penalty is imprisonment for at least 12 months, had the conduct occurred in Vanuatu;

“gambling record” of a licensee, means a record (including a document) about the operations conducted by the licensee under its licence;

“guidelines” means guidelines made under section 42C;

“inspector” means a person who is an inspector for this Act;

“interactive game” has the meaning given by section 2;

“interactive gaming equipment” means a machine or other device (whether electronic, electrical or mechanical), computer software or any other thing used or suitable for use in the conduct of an interactive game;

“interactive gaming tax” means the tax imposed under section 30;

“key person” of an applicant for a licence or a licensee means a beneficial owner, owner, controller, director or manager of the applicant or licensee;

“law enforcement agency” means:

- (a) the Vanuatu Police Force; or
- (b) the Office of the Public Prosecutor; or
- (c) the department responsible for customs and inland revenue; or
- (d) the department responsible for immigration; or
- (e) such other persons prescribed for the purposes of this definition;

“licence” means a licence issued under this Act to conduct interactive games;

“licensee” means a company that is licensed under this Act to conduct interactive games;

“manager” of an applicant for a licence or a licensee means:

- (a) an individual who occupies the position of the chief executive officer (however described) of the applicant or licensee; or
- (b) an individual who under the immediate authority of the chief executive officer or a director of the applicant or licensee, exercises the management functions of the applicant or licensee;

“Minister” means the Minister responsible for finance;

“owner” of an applicant for a licence or a licensee means a person who has a legal entitlement of 25% or more of the applicant or licensee by way of ownership of shares or otherwise, and “own” and “ownership” have a corresponding meaning;

“player” means a person who participates in an interactive game;

“regulations” means regulations made under this Act;

“Regulator” has the meaning given by subsection 34(1);

“regulatory law” means a law that provides for:

- (a) the grant or issue of licences, permits, certificates, registrations or other equivalent permissions; and
- (b) other regulatory functions related to a matter referred to in paragraph (a), including monitoring or enforcing compliance with standards or obligations prescribed by that law;

“Sanctions Secretariat” means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. 6 of 2017;

“telecommunication device” means:

- (a) a computer adapted for communicating by way of the internet or another communications network; or
- (b) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or other communications device; or
- (c) a telephone; or
- (d) any other electronic device or thing for communicating at a distance.

#### **1A. Meaning of beneficial owner**

- (1) A beneficial owner of an applicant for a licence or a licensee is a natural person who ultimately owns or ultimately controls the applicant or licensee.
- (2) For the purpose of subsection (1), ultimately owns and ultimately controls include circumstances where ownership or control is exercised:
  - (a) through a chain of ownership; or
  - (b) by a means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.

#### **2. Interactive game**

- (1) A game is an interactive game if:
  - (a) a prize consisting of money or something else of value is offered or can be won under the rules of the game; and
  - (b) a player:
    - (i) enters the game or takes any step in the game by means of a telecommunications device; and
    - (ii) gives, or undertakes to give, a monetary payment or other valuable consideration to enter the game; and
  - (c) the winner of a prize in the game is decided:
    - (i) wholly or partly by chance; or
    - (ii) by a competition or other activity in which the outcome is wholly or partly dependant on the player’s skill.
- (2) Subject to subsection (3), betting on a race event, sporting event or any other event by means of a telecommunications device is taken to be an interactive game.

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- (3) Betting conducted under the Betting (Control) Act No. 1 of 1993\* on commencement is not an interactive game.
  - (4) A game is not an interactive game if a regulation declares it not to be an interactive game.

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\* *Editor's note: Act 1 of 1993 has since been repealed.*

## **PART 2 – LICENCES FOR INTERACTIVE GAMING**

### **Division 1 – Offence for Unlicensed Interactive Gaming**

#### **3. Licensees to conduct interactive gaming**

- (1) A person must not conduct an interactive game wholly or partly in Vanuatu unless the person is a licensee and the game has been approved by the Regulator under section 19.
- (2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:
  - (a) if the person is an individual – by a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or
  - (b) in any other case – by a fine not exceeding VT 125 million.

### **Division 2 – Licensing Procedure**

#### **4. Application for licence**

- (1) An application for a licence to conduct interactive games in Vanuatu must:
  - (a) be made by a local company registered under the Companies Act No. 25 of 2012; and
  - (b) be made in writing to the Regulator; and
  - (c) be in such form as is specified by the Regulator; and
  - (ca) include the following information:
    - (i) details of each key person of the applicant;
    - (ii) details as required by the Regulator on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction;
    - (iii) details of the source of funds used to pay the capital of the applicant; and
  - (d) be accompanied by such application fee as is prescribed by the regulations.
- (2) The Regulator may, by written notice given to an applicant for a licence, require the applicant to give the Regulator further information or documents that are necessary and reasonable to help the Regulator determine the application. The notice must specify a period of not less than 14 days within which the applicant is to give the further information or documents.
- (3) An applicant must not:
  - (a) make an application that is false or misleading in any material particular; or
  - (b) give in response to a notice under subsection (2) any information or document that is false or misleading in any material particular.
- (4) An applicant that contravenes subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding VT 60,000,000.
- (5) An application fee referred to in subsection (1)(d) is not refundable.

#### **5. Application to be granted or refused**

- (1) The Regulator must:
  - (a) consider an application for a licence; and

- (b) either grant or refuse to grant the application within 2 months after receiving it and any other information or documents requested by the Regulator under section 4.
- (2) The Regulator may grant an application for a licence only if:
- (a) the Regulator is satisfied that the applicant is a suitable person to hold a licence; and
  - (b) the application and any information or documents given in response to a notice under section 4 are not false or misleading in any material particular; and
  - (c) any person required to comply with section 6(3) has done so.
- (3) In deciding whether an applicant is a suitable person to hold a licence, the Regulator must have regard to the following:
- (a) whether each key person of the applicant is a fit and proper person;
  - (b) the applicant's current financial position and whether the applicant has the financial, technical and other resources to conduct interactive games under a licence;
  - (c) whether the Regulator is satisfied:
    - (i) of the source of funds used to pay the capital of the applicant; and
    - (ii) that the source of funds are not tainted with illegality; and
  - (d) whether the applicant has in place a satisfactory corporate, ownership or trust structure;
  - (e) the experience and business ability of the persons who will be involved in the management or operation of the applicant's operations;
  - (f) anything else prescribed under the regulations.
- (3A) In deciding under paragraph (3)(a) whether a key person is a fit and proper person, the Regulator must have regard to:
- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and
  - (b) whether the person is listed on a United Nations Financial Sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list of a law of any jurisdiction; and
  - (c) any other fit and proper criteria in the guidelines.
- (4) If the Regulator decides to grant an application for a licence, the Regulator must within 7 days issue a licence to the applicant.
- (5) If the Regulator decides to refuse to grant an application for a licence, the Regulator must within 7 days give the applicant written notice of the decision.
- 6. Investigation in relation to application**
- (1) The Regulator must conduct the investigations and make the inquiries the Regulator considers to be necessary to enable him or her to determine an application for a licence.
- (2) The Regulator may obtain from a law enforcement agency a report on any key person of the applicant.
- (3) For the purposes this section, the Regulator may require an individual mentioned in

subsection (2) to have his or her photograph, fingerprints and palm prints taken.

- (4) A person who fails to comply with a requirement under subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding VT 15 million.

#### **7. Existing operators taken to be licensed**

- (1) Any person conducting an interactive game wholly or partly in Vanuatu under a licence or other agreement on commencement (in this section called “existing operators”) is taken to be a licensee.
- (2) The Minister must grant a licence to each existing operator as soon as practicable after commencement.
- (3) If, on commencement, an existing operator is in contravention of any provision of this Act, the operator must:
- (a) give written details of the contravention to the Regulator within one month after commencement; and
  - (b) rectify the contravention within 2 months, or such longer period as the Regulator approves in writing, after commencement.
- (4) Compensation is not payable by the State to an existing operator in respect of any loss or damage suffered by the operator that:
- (a) arises from the operator rectifying a contravention of this Act in accordance with subsection (3); or
  - (b) arises as a result of the operator having its licence suspended or revoked after failing to rectify a contravention of this Act in accordance with subsection (3); or
  - (c) is in any other way attributable to the coming into force of this Act.

### **Division 3 – Conditions and Form of Licence**

#### **8. Conditions of licence**

- (1) The Regulator must determine the conditions of a licence.
- (2) The period of a licence cannot exceed 15 years.
- (3) The Regulator may include in a licence any other conditions that are necessary or desirable in the public interest, or for the proper conduct of interactive gaming.
- (4) The Regulator may:
- (a) vary the conditions of a licence; or
  - (b) impose further conditions of a licence.
- (5) Before changing the conditions of a licence under subsection (4), the Regulator must notify the licensee in writing of the proposed change and give the licensee at least 14 days in which to make submissions in writing to the Regulator.
- (6) The Regulator must:
- (a) take into account any submissions made by the licensee in making his or her decision; and
  - (b) give the licensee written notice of any change to the conditions of its licence.
- (7) Subject to subsection (2), the Regulator may, by notice in writing to a licensee, extend the term of a licence:
- (a) issued under section 5 before the commencement of this subsection; or



(b) mentioned in section 7(2).

**9. Licence fee**

- (1) A licensee must pay to the Regulator a fee prescribed by the regulations for the grant of a licence (including a licence granted under section 7(2)) and on each anniversary of the date the licence was granted.
- (2) A licensee that fails to pay the fee by the due date is liable to a surcharge equal to 100 percent of the prescribed fee. The fee and the surcharge are debts due to the State by the licensee and the State may recover the debts by action in a court of competent jurisdiction.

**10. Form of licence**

- (1) A licence must be in the form approved by the Regulator.
- (2) The approved form must provide for the inclusion of the following particulars:
- (a) the licensee's name;
  - (b) the date of issue of the licence;
  - (c) the period for which the licence is granted;
  - (d) the conditions of the licence;
  - (e) such other particulars as are prescribed.

**Division 4 – Suspension, Revocation and Surrender**

**11. Suspension and revocation of licence**

- (1) The Regulator may suspend or revoke a licence if:
- (a) the Regulator is satisfied on reasonable grounds that:
    - (i) the licensee is no longer a suitable person to hold a licence; or
    - (ii) the licence was issued on the basis of materially false or misleading information or documents; or
    - (iii) following an investigation by an inspector under section 37 or an audit under section 27 or 28, the licensee has insufficient financial resources to conduct interactive games in accordance with its licence and it is in the public interest to suspend or revoke the licence; or
  - (b) the licensee is convicted of an offence against this Act; or
  - (ba) the licence fee prescribed under section 9 is not paid on or before the due date; or
  - (bb) the licensee has contravened a provision of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or
  - (bc) the licensee has failed to comply with subsection 24(1); or
  - (c) the licensee is subject to voluntary or involuntary winding up proceedings or has a receiver appointed.
- (2) In exercising his or her power under subsection (1)(a)(i), the Regulator may have regard to the matters mentioned in subsections 5(3) and (3A). The Regulator may exercise the power whether or not a notice has been given by the licensee under section 24.

- (3) If the Regulator intends to suspend or revoke a licence, the Regulator must notify the licensee in writing of the proposed suspension or revocation and give the licensee at least 14 days in which to make submissions in writing to the Regulator.
- (4) The Regulator must take into account any submissions made by the licensee in deciding whether to suspend or revoke the licence.
- (5) The Regulator must give the licensee written notice of any suspension or revocation of its licence.

## **12. Immediate suspension**

- (1) The Regulator may suspend a licence immediately for a period not exceeding 90 days if the Regulator believes that:
  - (a) a ground exists under section 11 to suspend or revoke the licence; and
  - (b) the circumstances are so extraordinary that it is imperative to suspend the licence immediately to ensure the public interest is not affected in an adverse and material way.
- (2) The suspension:
  - (a) must be effected by a written notice given to the licensee; and
  - (b) operates immediately the notice is given; and
  - (c) continues to operate until the Regulator cancels the suspension or it expires, whichever happens first.

## **13. Effect of suspension and revocation**

- (1) A company whose licence is suspended or revoked under section 11 or 12 must cease to conduct all interactive games while the suspension or revocation is in force.
- (2) The Regulator may rescind the suspension of a licence on his or her own motion or on application in writing by the company concerned.
- (3) The licensee can resume conducting interactive games when the suspension is rescinded or expires.

## **14. Surrender of licence**

- (1) The Regulator may, after consultation with the Regulator, approve the surrender of a licence on application in writing by the licensee.
- (2) The Regulator may impose conditions relating to the surrender of a licence, including conditions that apply after the surrender and the former licensee must comply with those conditions.
- (3) A former licensee that fails to comply with any conditions imposed under subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.

## **Division 5 – Other General Provisions**

### **15. Renewal of licence**

- (1) A licensee must apply in writing to the Regulator to renew its licence not less than 28 days before the day on which the licence expires.
- (2) The Regulator may refuse to renew a licence on any ground referred to in section 11(1) on which the Regulator may suspend or revoke the licence, but not on any other ground.
- (3) If the Regulator intends not to renew a licence, the Regulator must notify the licensee

in writing of the proposed refusal to renew and give the licensee at least 14 days in which to make submissions in writing to the Regulator.

- (4) The Regulator must take into account any submissions made by the licensee in deciding whether to renew the licence.
- (5) The Regulator must give the licensee written notice of any refusal to renew the licence.

**16. Licence not to be transferred**

A licence cannot be transferred except by way of enforcement of a mortgage, charge or encumbrance in accordance with section 17(2).

**17. Mortgage, charge or encumbrance over licence**

- (1) A licensee must not mortgage, charge or otherwise encumber its licence except with the written approval of the Regulator.
- (2) If a person has a right to sell and transfer a licence under or because of a mortgage, charge or encumbrance, the licence may only be sold and transferred to a person approved by the Regulator after consultation with the Regulator.
- (3) The Regulator must not approve the transfer of a licence, unless the Regulator is satisfied that the proposed transferee is a suitable person to hold the licence.
- (4) In deciding whether to approve the transfer, the Regulator may take into account the matters set out in section 5(3) and exercise any of the powers in section 6 in relation to the proposed transferee.
- (5) If a person has under, or because of, a mortgage, charge or encumbrance a power to appoint a receiver or manager of the business conducted under the licence, the power may only be exercised if the Regulator first approves the proposed receiver or manager in writing.

### **PART 3 – COMPLIANCE REQUIREMENTS**

#### **18. No internet gambling by persons under 18**

- (1) A licensee must not allow an individual who is under 18 years of age to play an interactive game conducted by the licensee.
- (2) A licensee that contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.

#### **19. Approval of interactive games**

- (1) A licensee must not conduct an interactive game under its licence unless the Regulator has given written approval for:
  - (a) the interactive game; and
  - (b) any software under which the game operates and, if possible, the source code for that game; and
  - (c) the rules of the game; and
  - (d) any material accompanying the game; and
  - (e) the way in which the game, and any accompanying material, presents to and interacts with the player.
- (2) In deciding whether to give an approval, the Regulator may have regard to whether:
  - (a) each player of the game will have easy access to the rules of the game and information about the rate of return that the game provides; and
  - (b) the game operates strictly in accordance with any rules and information provided to players; and
  - (c) any aspect of the game is false or misleading; and
  - (d) the graphics, sounds, text and other presentational aspects of the game are socially responsible and in accordance with prescribed standards.
- (3) A licensee that contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 50,000,000.

#### **20. Approval of control systems**

- (1) A licensee must not conduct interactive games under its licence unless the Regulator has given written approval for the licensee's control system.
- (2) In deciding whether to approve a licensee's control system, the Regulator may have regard to the following:
  - (a) the licensee's general procedures to be followed for the conduct of interactive games;
  - (b) the licensee's procedures and standards for the maintenance, security, storage and transportation of equipment to be used for the conduct of interactive games;
  - (c) the licensee's procedures for recording and paying prizes won in interactive games;
  - (d) the licensee's procedures for using and maintaining surveillance and security facilities;
  - (e) the licensee's systems for transferring and accounting of money;
  - (f) the licensee's procedures for:

- (i) dealing with players' complaints about games; and
  - (ii) conforming with the policies of financial bodies (for example, MasterCard and Visa); and
  - (iii) excluding players from playing interactive games; and
  - (iv) identifying and managing the problem gambling behaviour of players; and
  - (v) registering players;
  - (g) the licensee's general administrative systems and procedures;
  - (h) such other matters as the Regulator thinks relevant.
- (3) A licensee that contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.

### **21. Change of control system**

- (1) A licensee may apply to the Regulator to change its approved control system.
- (2) The application must:
- (a) be made in writing at least 60 days before the licensee proposes to start conducting interactive games under the approved control system as proposed to be changed; and
  - (b) contain particulars of the proposed changes to the licensee's approved control system.
- (3) In deciding whether to approve the application, the Regulator must have regard to the matters referred to in section 20(2).
- (4) The Regulator may, by written notice given to a licensee, direct the licensee to change the licensee's approved control system within the time, and in the way, stated in the notice.
- (5) If the licensee does not comply with the direction, the approval for the licensee's control system is cancelled.

### **22. Approval of equipment**

- (1) A licensee must obtain the Regulator's written approval for each item of interactive gaming equipment used by the licensee to conduct interactive games under its licence.
- (2) A licensee must not install, modify, decommission, remove or destroy any such equipment without the written approval of the Regulator.
- (3) Computer software does not have to be approved under this section if it has been approved under section 19.
- (4) A licensee that contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.

### **23. Financial institution accounts**

- (1) A licensee must keep an account or accounts with a financial institution in Vanuatu that is licensed under the Financial Institutions Act [Cap. 254] for use for:
- (a) all banking or similar transactions for the operations conducted under its licence; or
  - (b) such other purposes as are approved in writing by the Regulator.
- (2) A licensee must use a financial institution account only for a purpose referred to in

subsection (1)(a) or for which the account is approved under subsection (1)(b).

- (3) A licensee that contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.

**24. Notification of changes**

(1) A licensee must give the Regulator written notice of:

- (a) a change in a key person of the licensee; or
  - (b) a change in the circumstances of a key person of the licensee that may affect whether he or she meets fit and proper criteria; or
  - (c) a reduction in the licensee's financial resources; or
  - (d) a change in the source of funds used to pay the capital of the licensee,
- within 7 days after the change or reduction occurs.

- (2) If a licensee fails to comply with subsection (1), the licensee commits an offence punishable upon conviction by a fine not exceeding VT 125 million.

**25. Records**

(1) A licensee must keep licensee's gambling records at a place approved by the Regulator in Vanuatu.

(2) Subsection (1) does not apply to an exempt gambling record prescribed by the regulations.

(3) A licensee must keep a gambling record for 5 years after the end of the transaction to which the record relates.

(4) A licensee that contravenes subsection (1) or (3) is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.

**26. Submission of reports**

(1) A licensee must give reports to the Regulator about the licensee's operations under its licence.

(2) The Regulator is to specify, by notice in writing to the licensee, the information to be included in the reports.

(3) The reports must be in an approved form and be given at the times stated in the notice.

(4) A licensee must not include any information that is false or misleading in a material particular in a report.

(5) The Regulator may make information obtained under this section available to a law enforcement agency within or outside Vanuatu if the Regulator is satisfied on reasonable grounds that the information relates to an activity that is illegal within or outside Vanuatu.

(6) A licensee that contravenes subsection (3) or (4) is guilty of an offence punishable on conviction by a fine not exceeding VT 75 million.

**27. Audit**

(1) As soon as practicable after the end of a financial year, a licensee must cause the books, accounts and financial statements for the operations conducted under its licence for the financial year to be audited by an auditor qualified for appointment in accordance with section 130 of the Companies Act No. 25 of 2012 and approved by the Regulator.

- (2) The auditor must:
  - (a) complete the audit within 3 months after the end of the financial year; and
  - (b) immediately after completion of the audit, give a copy of the audit report to the Regulator.
- (3) Paragraph (a) of subsection (2) does not apply to the auditor if the Regulator is satisfied that in the circumstances it would be unreasonable to require the auditor to comply with the paragraph, and the auditor completes the audit as soon as practicable.
- (4) On receiving an auditor's report, the Regulator may, by written notice given to the licensee, require the licensee to give the Regulator further information about a matter relating to the licensee's operations mentioned in the audit report.
- (5) A licensee must comply with a requirement under subsection (4) within the time stated in the notice.
- (6) An audit is to be undertaken at the licensee's own expense.
- (7) A licensee that contravenes subsection (1) or (5) is guilty of an offence punishable on conviction by a fine not exceeding VT 50,000,000.

## **28. Special audit**

- (1) The Regulator may, by notice in writing to the licensee, require the licensee to cause the books, accounts and financial statements for the operations conducted under its licence to be audited for the period specified in the notice if the Regulator is satisfied that the licensee:
  - (a) may have insufficient financial, technical or other resources to conduct interactive games in accordance with its licence and the provisions of this Act; or
  - (b) may have undertaken fraudulent acts in conducting interactive games under its licence; or
  - (c) may have provided false or misleading reports under section 26.
- (2) The audit must be undertaken at the licensee's own expense within the period specified in the notice by an auditor qualified for appointment in accordance with section 130 of the Companies Act No. 25 of 2012 and approved by the Regulator.
- (3) The auditor must give a copy of the report to the Regulator immediately after completing it.
- (4) A licensee that contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding VT 75 million.

## **29. Investigation of licensee**

- (1) The Regulator may, at any time, conduct the investigations and make the inquiries the Regulator considers to be necessary to enable him or her to determine whether a licensee:
  - (a) is a suitable person to continue to hold a licence; or
  - (b) is complying with the provisions of this Act, the regulations or the code.
- (2) A licensee must pay to the Regulator the reasonable costs incurred by the Regulator in conducting any investigation and making any inquiry.

## **29A. Regulator may require information and documents relating to licensee**

- (1) Without limiting section 29, the Regulator may, by notice in writing to a licensee,

require the licensee to provide the Regulator 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 whether the licensee:
  - (a) is a suitable person to continue to hold a licence; or
  - (b) is complying with the provisions of this Act, the Regulations or the code.
- (3) If the licensee:
  - (a) refuses or fails to give the Regulator the information or documents required by the Regulator; or
  - (b) knowingly or recklessly gives the Regulator information or documents that are false or misleading,the licensee commits an offence punishable upon conviction by a fine not exceeding VT 75 million.

**29B. On-site inspections**

- (1) Without limiting section 29, the Regulator may conduct on-site inspections at the business premises occupied by a licensee at any time during normal business hours.
- (2) The Regulator may for the purposes of subsection (1):
  - (a) enter the business premises of the licensee during ordinary business hours; and
  - (b) inspect and take copies of any books, accounts and documents of the licensee that are or may be relevant to determining whether the licensee:
    - (i) is a suitable person to continue to hold a licence; or
    - (ii) is complying with the provisions of this Act, the Regulations or the code.
- (3) The licensee must cooperate fully with the Regulator by:
  - (a) giving the Regulator all the information, and making available the documents it requires; and
  - (b) if necessary, giving the Regulator appropriate workspace and reasonable access to office services, during the inspection.
- (4) If a person intentionally obstructs the Regulator in the exercise of the Regulator's powers under this section, the person commits an offence punishable upon conviction by:
  - (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
  - (b) in the case of a body corporate - a fine not exceeding VT 75 million.
- (5) In this section, a reference to the Regulator includes an inspector.
- (6) An inspector must:
  - (a) obtain the consent of the licensee to exercise powers under this section or in the absence of consent must obtain a search warrant from the Magistrates' Court; and
  - (b) produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.
- (7) A magistrate must not issue a warrant unless he or she is satisfied by information on oath that:



- (a) an offence against this Act has been or is being committed, or is likely to be committed, on the premises; and
- (b) evidence of the commission, or likely commission, of the offence is likely to be found on the premises.

**29C. Regulator may request information and documents**

For the purpose of performing a function or exercising a power under this Act, the Regulator may request information or documents, or both, from any or all of the following:

- (a) the Financial Intelligence Unit;
- (b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;
- (c) the Sanctions Secretariat;
- (d) a law enforcement agency;
- (e) a domestic regulatory authority;
- (f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e).

## **PART 4 – INTERACTIVE GAMING TAX**

### **30. Liability to tax**

- (1) Subject to subsection (1A), a tax (“interactive gaming tax”) is imposed on the gross profit of the licensee’s operations under its licence.
- (1A) If a licensee’s operations consist in whole or in part of fixed odds wagering, interactive gaming tax is imposed on the gross turnover of the whole of those operations or that part of those operations, as the case requires.
- (2) Subject to subsection (3), interactive gaming tax is to be calculated and paid on a basis prescribed by the regulations.
- (3) The rate of interactive gaming tax must not exceed:
  - (a) in the case of fixed odds wagering, 5% of a licensee’s gross turnover; or
  - (b) in any other case, 18% of a licensee’s gross profit.
- (4) For the purposes of this section, the gross profit of a licensee’s operations (other than fixed odds wagering) under its licence for a particular period is to be worked out using the following formula:  
$$\text{Gross profit} = \text{Amount played} - \text{Amount of winnings}$$
where:  
“Amount played” is the total amount received during that period by the licensee from those operations; and  
“Amount of winnings” is the total amount paid out as prizes to players during that period by the licensee in respect of those operations.
- (5) For the purposes of this section, the gross turnover of a licensee’s operations consisting of fixed odds wagering for a particular period is the total amount received during that period by the licensee from the fixed odds wagering less amounts paid to bettors or any other person during that period by way of a refund on account of non-operative bets due to:
  - (a) the abandonment or postponement of the betting event concerned; or
  - (b) the scratching or withdrawal from that betting event of any runner or participant on which a bet has been made.

### **31. Payment and returns for calculation of tax**

- (1) Interactive gaming tax is payable by the licensee on or before the last working day of each month (“the payment date”) following the month in respect of which the gross profit was made.
- (2) A licensee must provide to the Regulator the information needed for calculating interactive gaming tax on or before the payment date. The information must be provided in an approved form.

- (3) A licensee that contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding VT 50,000,000.

**32. Penalty for late payment and underpayment**

- (1) A licensee must pay to the Regulator a penalty on any amount of interactive gaming tax outstanding ("the unpaid amount") as at the end of the period allowed for the payment.
- (2) The penalty is:
- (a) 10% of the unpaid amount; and
  - (b) a further 2% of the unpaid amount for each month or part of a month during which the unpaid amount is not paid.
- (3) If any part of an underpayment of interactive gaming tax is due to fraud, there is to be added to the tax an amount equal to 3 times the underpayment.

**33. Recovery of amounts**

An amount of interactive gaming tax and any penalty payable under this Part are debts due to the State by the licensee and may be recovered by the State by action in a court of competent jurisdiction.

## **PART 5 – REGULATOR**

### **34. Functions and powers of Regulator**

- (1) The Director of Customs and Inland Revenue is the Regulator.
- (2) The Regulator must:
  - (a) administer this Act; and
  - (b) process applications for licences made under section 4 and advise the Regulator on such applications; and
  - (c) perform the other functions conferred on the Regulator by this or any other Act.
- (3) The Regulator has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.
- (4) The Regulator must perform his or her functions in accordance with any general policy directions given by the Minister in writing. However, the Minister must not give directions that are inconsistent with this Act.

### **35. Code of practice**

- (1) The Regulator must prepare a code of practice for licensees.
- (2) In preparing the code of practice; the Regulator must consult with all licensees.
- (3) Without limiting the code of practice, it may provide for the following:
  - (a) the standards to be complied with by licensees conducting interactive games;
  - (b) the prizes in interactive games conducted by licensees;
  - (c) the payment of winnings by licensees to players;
  - (d) the way in which disputes between players and licensees are to be resolved.
- (4) The code of practice is a regulation for the purposes of this Act.

- (5) A licensee that contravenes a provision of the code of practice is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.

**36. Complaints**

- (1) The Regulator must cause to be investigated any complaint made to the Regulator about a licensee's operations.
- (2) However, the Regulator does not have to investigate a complaint if in his or her opinion the complaint is petty, frivolous or vexatious.

**37. Appointment of inspectors**

- (1) The Regulator may appoint all or any of the following to be an inspector:
- (a) a Customs officer; or
  - (b) any other person, including a person who is not a public servant, who has appropriate qualifications and expertise.
- (2) An inspector has the following powers:
- (a) to inspect, examine or test any interactive games or interactive gaming equipment used by a licensee in conducting operations under the licence;
  - (b) to require a person to produce documents or answer questions about such games or equipment;
  - (c) to enter any premises used by the licensee for conducting operations under its licence and seize:
    - (i) any such games or equipment; or
    - (ii) any other books, document or thing (including electronically stored information);on those premises that the inspector considers will afford evidence of the commission of an offence against this Act.
- (3) An inspector must obtain the consent of the owner or occupier of the premises to exercise the powers under subsection (2)(c) or in the absence of consent must obtain a search warrant from the Magistrates' Court.
- (4) A magistrate must not issue a warrant unless he or she is satisfied by information on oath that:
- (a) an offence against this Act has been or is being committed, or is likely to be committed, on the premises; and
  - (b) evidence of the commission, or likely commission, of the offence is likely to be found on the premises.

**38. Reports**

- (1) The Regulator must, within 2 months after the end of each year, provide the Minister with a report relating to the Regulator's activities for that year.
- (2) The Regulator must provide the Minister with any additional information he or she requires about a matter contained in a report.
- (3) The Minister must table a copy of a report in the Parliament within 5 sitting days of an ordinary session after receiving the report.

**39. Delegation of functions and powers**

- (1) The Regulator may, by instrument in writing, delegate all or any of his or her functions and powers under this Act to a Customs officer or any other officer or employee of the Customs Department.
- (2) The delegation:
  - (a) may be made either generally or as otherwise provided by the instrument of delegation; and
  - (b) does not prevent the performance or exercise of the function or power so delegated by the Regulator.

**40. Contracting out services and work**

- (1) The Regulator may enter into an agreement with a person with appropriate qualifications and expertise to provide services to, or to perform work for, the Regulator.
- (2) The requirements set out in the Government Contracts and Tenders Act [Cap. 245] and the regulations made under that Act for the contracting out of services and work must be complied with before the Regulator enters into any agreement under subsection (1).

## PART 6 – MISCELLANEOUS

41. *(Repealed)*

### 42. Disclosure of confidential information

(1) The Regulator may disclose confidential information if the disclosure:

- (a) is required or authorised by the Court; or
- (b) is made for the purpose of performing a function or exercising a power under this Act; or
- (c) is made to the Financial Intelligence Unit for the purpose of performing a function or exercising a power under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or
- (d) is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purpose of performing a function or exercising a power under that Act; or
- (e) is made to a law enforcement agency for the purpose of investigating or prosecuting an offence against a law of Vanuatu for which the maximum penalty is a fine of at least VT 1 million or imprisonment for at least 12 months; or
- (f) is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or
- (g) is made to a domestic regulatory authority for the purpose of carrying out its regulatory functions; or
- (h) is made to the Sanctions Secretariat for the purpose of performing a function or exercising a power under the United Nations Financial Sanctions Act No. 6 of 2017; or
- (i) is made to a foreign government agency in accordance with section 42A.

(2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:

- (a) for an individual-a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; and
- (b) for any other person - a fine not exceeding VT 75 million.

### 42A. Disclosure to foreign government agency

The Regulator may disclose confidential information about a licensee to a foreign government agency if:

- (a) the Regulator is satisfied that the disclosure is for the purpose of:
  - (i) performing a function or exercising a power under the foreign government agency's own regulatory legislation, including investigating a breach of that legislation; or
  - (ii) performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or
  - (iii) performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or
  - (iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion

- offence; or
- (v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and
- (b) the Regulator is satisfied that:
- (i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and
- (ii) the agency is subject to adequate restrictions on further disclosure.

#### 42B. Indemnity from liability

A person is not subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done by the person in good faith under or for the purposes of this Act.

#### 42C. Guidelines

For the purposes of this Act, the Regulator may make written guidelines, including setting out the criteria for determining whether a person is a fit and proper person.

#### 43. Forfeiture

A court that finds a person guilty of an offence under this Act may order that any interactive gaming equipment or other item used, or intended to be used, by the person in the commission of the offence is forfeited to the State.

#### 44. Regulations

The Minister may make regulations not inconsistent with this Act for the better carrying out or to give effect to the provisions of this Act.

#### 45. Application of certain other Acts

- (1) To avoid doubt, the Vanuatu Foreign Investment Promotion Act [Cap. 248] applies in relation to an applicant for a licence and a licensee.
- (2) To avoid doubt, the Business Licence Act [Cap. 249] does not apply in relation to an applicant for a licence or a licensee.

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#### Table of Amendments

1	<i>Amended by Act 10 of 2008, Act 22 of 2017</i>	14(3) 15(2)	<i>Amended by Act 22 of 2017</i>
1A	<i>Inserted by Act 22 of 2017</i>	18(2)	<i>Amended by Act 22 of 2017</i>
3(2)(a)	<i>Amended by Act 22 of 2017</i>	20(3)	<i>Amended by Act 22 of 2017</i>
3(2)(b)	<i>Amended by Act 22 of 2017</i>	22(4)	<i>Amended by Act 22 of 2017</i>
4(1)(a)	<i>Amended by Act 49 of 2000</i>	23(3)	<i>Amended by Act 22 of 2017</i>
4(1)(ca)	<i>Inserted by Act 22 of 2017</i>	24	<i>Substituted by Act 22 of 2017</i>
5(2)	<i>Amended by Act 22 of 2017</i>	25(4)	<i>Amended by Act 22 of 2017</i>
5(3)(a)	<i>Substituted by Act 22 of 2017</i>	26(6)	<i>Amended by Act 22 of 2017</i>
5(3)(c)	<i>Substituted by Act 22 of 2017</i>	27(1)	<i>Amended by Act 19 of 2013</i>
5(3A)	<i>Inserted by Act 22 of 2017</i>	28(2)	<i>Amended by Act 19 of 2013</i>
6(2)	<i>Substituted by Act 22 of 2017</i>	28(4)	<i>Amended by Act 22 of 2017</i>
6(4)	<i>Amended by Act 22 of 2017</i>	29A - 29C	<i>Inserted by Act 22 of 2017</i>
7(4)	<i>Amended by Act 2 of 2010</i>	30(1)	<i>Amended by Act 30 of 2002</i>
8(1)	<i>Amended by Act 22 of 2017</i>	30(1A)	<i>Inserted by Act 30 of 2002</i>
8(2)	<i>Amended by Act 49 of 2000</i>	30(3)	<i>Substituted by Act 30 of 2002</i>
8(7)	<i>Inserted by Act 49 of 2000</i>	30(4)	<i>Amended by Act 30 of 2002</i>
11(1)	<i>Amended by Act 22 of 2017</i>	30(5)	<i>Inserted by Act 30 of 2002</i>
11(1)(ba)	<i>Inserted by Act 49 of 2000</i>	35(5)	<i>Amended by Act 22 of 2017</i>
11(1)(bb) – (bc)	<i>Inserted by Act 22 of 2017</i>	41	<i>Repealed by Act 22 of 2017</i>
11(2)	<i>Amended by Act 22 of 2017</i>	42	<i>Substituted by Act 22 of 2017</i>
12(1)	<i>Amended by Act 22 of 2017</i>	42A – 42C	<i>Inserted by Act 22 of 2017</i>