



## REPUBLIC OF VANUATU

### CURRENCY DECLARATION ACT NO. 7 OF 2009

#### Arrangement of Sections

1	Interpretation.....	2
2	Obligation to declare.....	3
3	Powers of an authorised officer to question.....	4
4	Power of an authorised officer to search .....	4
5	Seizure of currency .....	5
6	Orders for seized currencies .....	5
7	Interest .....	7
8	Release of detained currency .....	7
9	Forfeiture .....	8
10	Appeal against forfeiture .....	8
11	Application of forfeited currency .....	9
12	Victims and other owners .....	9
13	Compensation .....	10
14	Determination of unlawful conduct .....	10
15	Matters relating to recoverable currency .....	11
16	Protection against liability .....	11
17	Regulations .....	11
18	Commencement .....	12

# REPUBLIC OF VANUATU

**Assent:** 14/08/2009  
**Commencement:** 04/02/2013

## CURRENCY DECLARATION ACT NO. 7 OF 2009

To provide for the declaration of currency and the seizure, detention or forfeiture of currency which is derived from, or intended to be used in criminal conduct and for related matters.

Be it enacted by the President and Parliament as follows:

### 1 Interpretation

In this Act, unless a contrary intention appears:

**authorised officer** means:

- (a) a customs officer appointed under the Customs Act [CAP 257]; or
- (b) an immigration officer appointed under the Immigration Act [CAP 66]; or
- (c) a police officer appointed under the Police Act [CAP 105]; or
- (d) a quarantine officer as defined under the Animal Importation and Quarantine Act [CAP 201].

**Court** means the Supreme Court;

**craft** includes any aircraft, ship, boat or other machine or vessel used or capable of being used for the carriage of transportation of persons or goods, or both, by air or water or over or under water;

**currency** includes:

- (a) the coin and paper money of Vanuatu or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;

- (b) monetary instruments that may be exchanged for money, including cheques, travellers cheques, money orders, and negotiable instruments in a form in which title passes on delivery;
- (c) precious metals, precious stones, pearls and jewellery;
- (d) any kind of monetary instrument which is found at any place in Vanuatu, if the instrument is specified by the Minister by Order; or
- (e) currency in electronic form includes but not limited to debit cards, credit cards, pre-paid mobile phones and any other electronic device with a stored value;

**recoverable currency** means currency that is obtained through unlawful conduct;

**unlawful conduct** means :

- (a) conduct that is unlawful under the criminal law of Vanuatu; or
- (b) conduct that is unlawful under the criminal law of another country or territory, and if it occurred in Vanuatu, would be unlawful under the criminal law of Vanuatu;;

**Minister** means the Minister of Finance and Economic Management;

**minimum amount** means the amount set by the Minister by Order as the minimum amount which can be seized pursuant to powers of seizure under this Act;

**mixed currency** means recoverable currency which is mixed with any other currency.

## **2 Obligation to declare**

- (1) A person who enters or leaves Vanuatu with currency amounting to VT1,000,000, or more or its equivalent in any other currency, must make a declaration to an authorised officer in the prescribed form.
- (2) Any person who sends out of or receives in to Vanuatu currency amounting to VT 1,000,000 or more by any means, including but not limited to postal services, courier services or transshipment by any craft must make a declaration to the Department of Customs in the prescribed form.

- (3) Any person who fails to declare currency in the prescribed amount to an authorised officer commits an offence and is liable on conviction to a fine not exceeding VT5, 000,000 or forfeiture of the currency under section 9.

### **3 Powers of an authorised officer to question**

- (1) An authorised officer may question a person entering into or departing from Vanuatu on the source, ownership, acquisition, use, or intended destination of any currency in that person's possession or custody.
- (2) A person who, without reasonable excuse on being questioned by an authorised officer, fails or refuses to answer any question put to him or her by the authorised officer, commits an offence and is liable on conviction to a fine not exceeding VT500,000.

### **4 Power of an authorised officer to search**

- (1) If an authorised officer who is lawfully on any premise, place, or craft has reasonable grounds for suspecting that there is on the premise, place or craft:
- (a) recoverable currency which is intended for use in an unlawful conduct; and
  - (b) the amount of which is not less than the minimum amount,
- the authorised officer may search the premise, place, or craft for such currency.
- (2) If an authorised officer has reasonable grounds for suspecting that a person is carrying:
- (a) recoverable currency which is intended for use in an unlawful conduct and the amount of which is not less than the minimum amount; or
  - (b) that such person has failed to declare, the amount of which is not less than the minimum amount in the prescribed form:
- the authorised officer may exercise the powers in subsection (3) of this section.
- (3) The authorised officer may, in so far as he or she thinks is necessary or expedient:

- (a) search anything, including goods, that a person has in his or her possession; or
  - (b) search the person.
- (4) The authorised officer exercising a power under subsection (3) (b) may detain a person for so long as is necessary for the officer to exercise the search.
- (5) A search under subsection 3(b) must be carried out by an authorised officer of the same gender as the person to be searched.

## **5 Seizure of currency**

- (1) Subject to subsection (2), an authorised officer may seize currency, if he or she has reasonable grounds for suspecting that the currency is, in whole or in part:
- (a) recoverable currency; or
  - (b) is intended for use by a person in unlawful conduct; or
  - (c) is an undeclared currency which is intended for use in unlawful conduct.
- (2) If currency is found on one person, or more than one person who are together, the total sum of currency found must be more than the minimum amount before a seizure may be made under this Act.
- (3) If currency is found in a premises, place or craft, the total sum of currency found must be more than the minimum amount before a seizure may be made under this Act.
- (4) An authorised officer exercising the power of seizure under this section must issue a notice of seizure to any person whom he or she believes has an interest in the currency.

## **6 Orders for seized currencies**

- (1) Subject to subsection (2), currency seized under section 5 may not be detained for more than 72 hours after it is seized.

- (2) An authorized officer may apply to the Court for the currency to continue to be detained if there are reasonable grounds for suspicion that the currency is in whole or in part:
- (a) recoverable currency; or
  - (b) currency which is intended for use in unlawful conduct; or
  - (c) currency which is undeclared and is intended for use in unlawful conduct.
- (3) The Court may order that the currency continue to be detained for a period of not more than 3 months from the date of the Order, if it is satisfied that:
- (a) there are reasonable grounds for suspecting that the currency is recoverable currency and that:
    - (i) its continued detention is justified while its source, ownership, use or destination is further investigated; or
    - (ii) consideration is given to bringing proceedings against any person for an offence with which the currency is connected; or
    - (iii) proceedings against a person for an offence with which the currency is connected has been started and has not been concluded; or
  - (b) there are reasonable grounds for suspecting that the currency is intended to be used in an unlawful conduct and that:
    - (i) its continued detention is justified while its source, ownership, use or destination is further investigated; or
    - (ii) consideration is given to bringing proceedings against any person for an offence with which the currency is connected; or
    - (iii) proceedings against a person for an offence with which the currency is connected has been started and has not been concluded; or
  - (c) there are reasonable grounds for suspecting that the currency is an undeclared currency, intended for use in unlawful act and:

- (i) its continued detention is justified while its source, ownership, use or destination is further investigated; or
  - (ii) consideration is given to bringing proceedings against any person for an offence with which the currency is connected; or
  - (iii) proceedings against a person for an offence with which the currency is connected has been started and has not been concluded.
- (4) The Court may make further orders that the currency be continue to be detained for a period not exceeding 2 years from the date of the order made under subsection(3) if any of the conditions under that subsection are met.
- (5) The authorized officers must inform persons affected by orders of the Court under this section.

## **7 Interest**

Currency that is seized under section 5 for more than 48 hours must be deposited into the General Revenue Account and interest accruing on it at the rate of 1.5% is to be paid out together with the principal amount upon its forfeiture under section 9.

## **8 Release of detained currency**

- (1) This section applies to currency detained under section 5.
- (2) A person from whom currency was seized under section 5 may apply to the Court for an order that whole or part of currency be released if the conditions in section5 for the detention of the currency are no longer met.
- (3) The Court may order the release of whole or any part of the currency if it is satisfied, that the conditions in section 5 for the detention of the currency are no longer met.
- (4) An authorised officer may, notify the Court that orders detention of currency under section 6 , to release whole or any part of it if he or she is satisfied that the detention of the currency is no longer justified.

## **9 Forfeiture**

- (1) An authorized officer may apply to the Court for an order to forfeit whole or any part of the currency detained under section 6 to the State.
- (2) The court may order the forfeiture of the currency or any part of it if it is satisfied that the currency or part of it:
  - (a) is recoverable currency; or
  - (b) is intended for use in unlawful conduct.
- (3) In the case of recoverable currency which belongs to joint tenants, the order may not apply to so much of it as the court is satisfied is attributable to the joint owner's share.
- (4) Where an application for the forfeiture of any currency is made under this section, the currency is to be detained (and may not be released under any power conferred by this Act) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.
- (5) Where currency has been seized and detained under sections 6 and 7, and no notice of appeal has been received by either the seizing authority or the Court within a period of 60 calendar days from the time of detention or seizure, then the currency will be automatically forfeited to the Republic of Vanuatu.

## **10 Appeal against forfeiture**

- (1) Any party to proceedings in which an order is made under section 9 for the forfeiture of currency who is aggrieved by the order, may appeal to the Court.
- (2) An appeal under subsection (1) must be made within t 60 calendar days beginning from the date on which the order is made.
- (3) The appeal is to be by way of a rehearing.
- (4) The court hearing the appeal may make any order as it thinks appropriate.
- (5) If the court upholds the appeal, it may order the release of the currency.



## **11 Application of forfeited currency**

- (1) Subject to subsection (2), currency forfeited under this Act, and any accrued interest on it must to be paid into the General Revenue Account.
- (2) Currency forfeited must not be paid:
  - (a) before the end of the period within which an appeal under section 10 may be made, or
  - (b) if a person appeals under that section 10 before the appeal is determined or otherwise disposed of.

## **12 Victims and other owners**

- (1) A person who is the owner of any currency or any part of it detained under this Act may apply to the Court for an order to release the currency.
- (2) An application for an order under subsection (1) may be made in the course of detention or forfeiture proceedings, or at any other time, but no later than 60 calendar days from the date of detention or forfeiture.
- (3) If it appears to the court concerned that:
  - (a) the applicant was deprived of the currency to which the application relates, or of currency which it represents, by unlawful conduct; and
  - (b) the currency was not, immediately before the owner was deprived of it, recoverable currency: and
  - (c) that the currency belongs to the person claiming ownership,the court may order the currency to which the application relates to be released to the applicant.
- (4) The Court may order currency to which the application relates to be released to the applicant or to the person from whom it was seized if it is satisfied that:
  - (a) currency belongs to the applicant; and
  - (b) the conditions in section 5 for the detention of that currency are no longer met or if an application has been made under section 8, the

court decides not to make an order under that section in relation to that currency; and

- (c) no objection to the making of an order under this subsection has been made by the person from whom that currency was seized

### **13 Compensation**

- (1) If no forfeiture order is made in respect of any currency detained under this Act, the person to whom the currency belongs, or from whom it was seized, may apply to the Court for compensation.
- (2) The court may order compensation if it is satisfied that the applicant has suffered loss as a result of the detention of the currency and that the circumstances are exceptional.
- (3) The amount of compensation to be paid under subsection (2) is the amount the court determines reasonable, having regard to the loss suffered and any other relevant circumstances.
- (4) If a forfeiture order is made in respect only of a part of any currency detained under this Act, this section has effect in relation to the other part.

### **14 Determination of unlawful conduct**

- (1) In determining whether or not conduct is unlawful, the court before which the issue is to be determined must decide on a balance of probabilities whether it has been proved:
  - (a) that any matters alleged to constitute unlawful conduct have occurred; or
  - (b) that the person intended to use currency in an unlawful conduct.
- (2) In deciding whether any currency was obtained through unlawful conduct:
  - (i) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,
  - (ii) it is not necessary to show that the conduct was of a particular kind if it is shown that the currency was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

- (3) The portion of the mixed currency which is attributable to the recoverable currency represents the currency obtained through unlawful conduct.

## **15 Matters relating to recoverable currency**

- (1) In this section, **Original currency** means currency that is the proceeds of crime.
- (2) Currency is recoverable currency if it is obtained through unlawful conduct.
- (3) Where currency obtained through unlawful conduct ("the original currency") is or has been recoverable, currency which represents the original currency is also recoverable currency.
- (4) If a person deals in any manner by which:
  - (i) he or she disposes of recoverable currency, whether the original currency or currency which represents the original currency; and
  - (ii) he or she obtains other currency in place of it,the other currency represents the original currency and is recoverable currency.
- (5) If a person disposes of recoverable currency which represents the original currency, the currency may be followed into the hands of the person who obtains it, and it continues to represent the original recoverable currency.

## **16 Protection against liability**

Any authorised officer, employer or agent or person authorized to act on behalf of an authorised officer, is not liable for any acts or omissions made in the discharge of his or her duties under this Act unless it is proved beyond reasonable doubt that the act or omission was not made in good faith.

## **17 Regulations**

The Minister may by Order make regulations:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **18 Commencement**

This Act commences on the date on which it is published in the Gazette.