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**CHAPTER 313
COUNTER TERRORISM AND
TRANSNATIONAL**

Act 29 of 2005



ORGANISED CRIME

ARRANGEMENT OF SECTIONS

PART 1 – PRELIMINARY

1. Principal objects
2. Interpretation
3. Definition of terrorist act
4. Regulations specifying certain entities

PART 2 – TERRORISM OFFENCES

5. Terrorist act an offence
6. Terrorism financing
7. Provision of property or services to terrorist groups
8. Dealing with terrorist property
9. Harboursing of persons committing terrorist acts
10. Provision of weapons to terrorist groups
11. Recruitment of persons to be members of terrorist groups or to participate in terrorist acts

PART 3 – MANAGEMENT AND FORFEITURE OF TERRORIST PROPERTY

Division 1 – Management

12. Direction to take control of property
13. Notice of direction
14. Variation, revocation, or expiry of direction
15. Appeal
16. Third parties may apply for relief
17. Court may grant relief to third party
18. Further provisions on management of property of specified entities

Division 2 – Forfeiture

19. Application for forfeiture order
20. Making forfeiture order
21. Effect of forfeiture order
22. Voidable transfer
23. Protection of third parties
24. Return of property
25. Appeal

Division 3 – Disclosure of information by financial institutions

26. Disclosures relating to terrorism

PART 4 – COUNTER TERRORISM CONVENTIONS

- 27. Terrorist bombing offences
- 28. Participation in organised criminal group
- 29. Offences against internationally protected person
- 30. Offence of taking a hostage
- 31. Offences relating to nuclear material
- 32. Other offences relating to nuclear material
- 33. Offence of hijacking

PART 5 – PEOPLE TRAFFICKING AND PEOPLE SMUGGLING

Division 1 – People Trafficking

- 34. Offence of trafficking in persons
- 35. Offence of trafficking in children
- 36. Exploitation of people not legally entitled to work
- 37. Consent of trafficked person
- 38. Protection for trafficked persons

Division 2 – People Smuggling

- 39. Offence of people smuggling
- 40. Offence to facilitate stay of an unauthorised person
- 41. Aggravated offences
- 42. Protection for smuggled persons

Division 3 – Other offences

- 43. Offence relating to fraudulent travel documents
- 44. Obligation on commercial carriers

PART 6 – GENERAL PROVISIONS

- 45. Boarding, search and detention of craft
- 46. Controlled delivery of property
- 47. Exchange of information relating to terrorist groups and terrorist acts
- 48. Jurisdiction
- 49. Consent of Attorney General
- 50. Restricted grounds for refusal to extradite or provide mutual assistance
- 51. Liability of a company
- 52. Appointment of Administrator
- 53. Non-liability of Administrator
- 54. Regulations

SCHEDULE – Counter Terrorism Conventions

**COUNTER TERRORISM AND
TRANSNATIONAL ORGANISED CRIME**

An Act relating to terrorism, people trafficking, people smuggling and other transnational organised crime, and for related purposes.

PART 1 – PRELIMINARY

Principal objects

1. The principal objects of this Act are:

- (a) to implement certain United Nations Security Council Resolutions and Conventions dealing with terrorism and transnational organised crime; and
- (b) to prevent terrorists from operating in Vanuatu; and
- (c) to prevent persons in Vanuatu from taking part in terrorist activities or supporting terrorism.

Interpretation

2. (1) In this Act, unless the contrary intention appears:

“Administrator” means the Attorney General or a person appointed by the Attorney General under section 51;

“aircraft” means any aircraft, other than an aircraft in the military, customs or police services;

“authorised officer” means:

- (a) the Commissioner of Police; or
- (b) a police officer authorised by the Commissioner of Police for a provision of this Act; or
- (c) a person authorised by the Minister for a provision of this Act.

“child” means a person under 18 years;

“commercial carrier” includes a company, or the owner, operator, or person in charge of any means of transport that engages in the transport of goods or people for commercial gain;

“counter terrorism convention” means:

- (a) an instrument mentioned in the Schedule; or
- (b) an instrument prescribed by the regulations;

“Court” means the Supreme Court of Vanuatu;

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

“entity” means a person, group, trust, partnership, fund or an unincorporated association or organisation;

“exploitation” includes all forms of sexual exploitation (including sexual servitude and exploitation of another person’s prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;

“explosive or other lethal device” means:

(a) an explosive or other incendiary weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage; or

(b) a weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents, toxins or similar substances or radiation or radioactive materials;

“forfeiture order” means an order made by the Court under section 20;

“fraudulent travel or identity document” means a travel or identity document that:

(a) has been made, or altered in any way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country; or

(b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(c) is being used by a person other than the lawful holder;

“illegal entry” means entering Vanuatu or any other country without complying with the requirements for lawful entry of that country;

“international organisation” means any organisation of States or Governments of States or any organ or any agency of any organisation of that kind;

“internationally protected person” means:

(a) any of the following persons while in a foreign country, including a member of the person’s family accompanying him or her:

(i) a Head of State (including any member of a collegial body performing the functions of a Head of State);

(ii) a Head of Government;

(iii) a Minister of State; or

(b) a representative or official of a country or an official or other agent of an international organisation of an inter-governmental character who, when and where a crime against the person or the person's official premises, private accommodation or means of transport is committed, is entitled under international law to special protection from attack on the person's freedom or dignity, as well as on the person's family forming part of that person's household;

“material benefit” includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service’

“Minister” means the Minister responsible for justice;

“nuclear material” means any of the following:

(a) plutonium with an isotopic concentration of not more than 80% in plutonium-238;

(b) uranium-233;

(c) uranium containing uranium-233 or uranium-235 or both;

(d) uranium with a naturally occurring isotopic concentration, other than uranium in the form of ore or ore residue;

(e) a substance containing nuclear material;

“operator”, for a craft, means the owner, operator or person having for the time being command or charge of the craft, other than a pilot of a ship, a harbour master or a law enforcement officer acting in the course of his or her duties;

“organised criminal group” means a group of persons, existing for a period of time, that acts together with an objective of obtaining material benefits from the commission of offences that are punishable by a maximum penalty of at least 4 years imprisonment;

“people smuggling” means the arranging or assisting of an unauthorised person's illegal entry into any country;

“property” includes:

(a) currency; and

(b) assets of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and

(c) legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit; and

(d) any legal or equitable interest in any such property;

“receiving country” means:

(a) for people smuggling – the country into which the unauthorised person’s entry is arranged; or

(b) for people trafficking – the country into which a trafficked person is brought as part of an act of trafficking in persons;

“registrable property” means property the title to which is passed by registration on a register kept under a law in force in Vanuatu;

“ship” means a vessel that is not permanently attached to the sea bed:

(a) including a hovercraft, hydrofoil, submarine or other floating craft; but

(b) not including a warship, a ship owned or operated by a state and being used as a naval auxiliary or for customs or police purposes or a ship that has been withdrawn from navigation.

“specified entity” means a person or entity that is prescribed under section 4;

“specified means” means any of the following:

(a) threat;

(b) use of force or other forms of coercion;

(c) abduction;

(d) fraud;

(e) deception;

(f) abuse of power or of a position of vulnerability;

(g) giving or receiving payments or benefits to achieve the consent of a person having control over another person;

“terrorist group” means:

(a) an entity that has as one of its activities or purposes committing, or facilitating the commission of, a terrorist act; or

(b) a specified entity;

“terrorist property” means:

- (a) property that has been, is being, or is likely to be used to commit a terrorist act; or
- (b) property that has been, is being, or is likely to be used by a terrorist group; or
- (c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity;

“terrorist act” means an act or omission in or outside Vanuatu that:

constitutes an offence within the scope of a counter terrorism convention; or
is mentioned in section 3;

“trafficked person” means a person who is the victim of trafficking in persons;

“trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation;

“unauthorised person”, for a country, means a person who is not a citizen of the country or is not in possession of all the documents required by the law of the country for the person’s lawful entry into the country;

“weapon” includes a firearm, chemical, biological or nuclear weapon;

(2) For this Act:

(a) the period during which an aircraft is in flight is taken to include:

(i) any period from the moment when all its external doors are closed following embarkation until the moment when any door is opened for disembarkation; and

(ii) for a forced landing – any period until the competent authorities take over responsibility for the aircraft and for persons and property on board; and

(b) an aircraft is taken to be in service:

(i) during the whole of the period that begins with the pre-flight preparation of the aircraft for a flight and ends 24 hours after the aircraft lands having completed that flight; and

(ii) at any time (outside that period) while, in accordance with paragraph (a), the aircraft is in flight.

(3) For this Act, a reference to an aircraft in flight includes a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(4) For this Act, unless the context otherwise requires, a reference to a country or the territorial limits of a country is taken to include a reference to the territorial waters, if any, of the country.

Definition of terrorist act

3. (1). The act or omission:

(a). is an act or omission that:

(i). involves death or serious bodily harm to a person; or

(ii). involves serious damage to property; or

(iii). endangers a person's life; or

(iv). creates a serious risk to the health or safety of the public or a section of the public; or

(v) involves the use of firearms, explosives or any other weapons; or

(vi) involves releasing into the environment or distributing or exposing the public to any dangerous, hazardous, radioactive or harmful substance, toxic chemical, microbial or other biological agent or toxin; or

(vii) is designed or intended to disrupt any computer system or other system or the provision of services directly related to communications infrastructure, banking, financial services, utilities, transportation or other essential infrastructure; or

(viii). is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services; or

(ix). involves prejudice to national security or public safety; or

(x). violates the national sovereignty and the territorial integrity of a country; or

(xi). involves armed aggression against a country, not being self defence; and

(b). is intended, or by its nature and context, may reasonably be regarded as being intended to:

(i). intimidate the public or a section of the public; or

(ii). compel a government or an international organisation to do, or refrain from doing, any act; and

(c) is made for the purpose of advancing a political, ideological or religious cause.

(2). However, an act or omission mentioned in subsection (1) does not include an act or omission that:

(a). is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subparagraphs (i), (ii), (iii) or (iv) of subsection (1)(a); or

(b). occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

Regulations specifying certain entities

4. (1) The Minister may make regulations prescribing as a specified entity a person or group if:

(a) the Security Council of the United Nations has made a decision under Chapter 7 of the Charter of the United Nations relating wholly or partly to terrorism; and

(b) the entity is identified in the decision, or using a mechanism established under the decision, as an entity to which the decision relates.

(2) The Minister may, after consultation with the Attorney General, make regulations prescribing as a specified entity a person or group if the person or group:

a) has committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act; or

b) is knowingly acting on behalf of, at the direction of or in association with a person or group mentioned in paragraph (a).

PART 2 – TERRORISM OFFENCES

Terrorist act an offence

5. If a person:

(a) does, or threatens to do, a terrorist act; or

(b) does an act preparatory to or in furtherance of a terrorist act; or

(c) omits to do anything that is reasonably necessary to prevent a terrorist act;

the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 25 years or a fine of not more than VT 125 million, or both.

Terrorism financing

COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME [CAP. 313]

6. (1) A person must not provide or collect, by any means, directly or indirectly, any property, intending, knowing or having reasonable grounds to believe that the property will be used in full or in part to carry out a terrorist act.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 25 years or a fine of not more than VT 125 million, or both.

Provision of property or services to terrorist groups

7. (1) A person must not, directly or indirectly, knowingly make available property or financial or other related services to, or for the benefit of, a terrorist group.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

(3) Subsection (1) does not apply if the provision of the property or service is of a kind that is authorised by a resolution of the United Nations Security Council or for the purpose of humanitarian aid or legal services.

Dealing with terrorist property

8. (1) A person must not knowingly:

(a) deal, directly or indirectly, in any terrorist property; or

(b) collect or acquire or possess terrorist property; or

(c) enter into, or facilitate, directly or indirectly, any transaction in respect of terrorist property; or

(d) convert, conceal or disguise terrorist property.

(2) A person does not commit an offence under paragraph (a), (b) or (c) of subsection (1) if the person:

(a) tells the Attorney General, in writing, as soon as the person becomes aware that the property is terrorist property; and

(b) acts in accordance with any directions of the Attorney General for the property.

(3) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

Harbouring of persons committing terrorist acts

9. (1) A person must not harbour or conceal, or prevent, hinder or interfere with the apprehension of, any other person knowing or having reason to believe that the other person:

- (a) has committed or is planning or is likely to commit a terrorist act; or
- (b) is a member of a terrorist group.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

Provision of weapons to terrorist groups

10. (1) A person must not knowingly offer to provide, or provide, a weapon to:

- (a) a terrorist group; or
- (b) a member of a terrorist group; or
- (c) any other person for use by, or for the benefit of, a terrorist group or a member of a terrorist group.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

Recruitment of persons to be members of terrorist groups or to participate in terrorist acts

11. (1) A person must not knowingly agree to recruit, or recruit, another person:

- (a) to be a member of a terrorist group; or
- (b) to participate in the commission of a terrorist act.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

PART 3 – MANAGEMENT AND FORFEITURE OF TERRORIST PROPERTY

Division 1 – Management

Direction to take control of property

12. (1) The Attorney General may apply to the Court for a direction under subsection (3) for property in Vanuatu if the Attorney General has reasonable grounds to believe that the property is terrorist property.

(2) The Court:

- (a) may make orders for service of the application; and
- (b) may deal with the application *ex parte*.

(3) If the Court is satisfied that there is evidence to support the application, the Court may direct the Administrator to take custody and control of the property.

(4) The direction:

- (a) must specify the property concerned; and
- (b) may be subject to conditions.

(5) A person who has custody or control of property mentioned in the direction must allow the Administrator to take custody and control of the property in accordance with the direction.

Notice of direction

13. (1) Notice of the making of a direction under section 12 must be given:

- (a) within 14 days from the date of making the direction to the person who owns or controls the property, if practicable, if the person or a representative of the person is in Vanuatu; and
- (b) to any other person that the Attorney General thinks may have an interest in the property.

(2) Failure to comply with subsection (1) does not affect the validity of the direction.

Variation, revocation, or expiry of direction

14. (1) If the Court has made a direction under section 12, the Court may, on application by the Attorney General or the person who owns or controls the property:

- (a) make another direction under section 12 varying the conditions of the direction or the property that is subject to the direction; or
- (b) revoke the direction.

(2) If the application is made by the person who owns or controls the property:

- (a) the person must give reasonable written notice of the application to the Attorney General; and
- (b) before deciding on the application, the Court must hear from the Attorney General.

(3) The Court must:

- (a) if the Court decides that there are reasonable grounds to do so, revoke the direction; or
- (b) if the Court decides that there are no reasonable grounds to revoke the direction, refuse the application.

(4) If the Court revokes the direction, the Attorney General must:

- (a) tell the person who owns or controls the property in writing; and
- (b) publish a notice of revocation in the Gazette.

(5) If not earlier revoked, a direction under section 12 about property of a specified entity expires if:

- (a) the entity ceases to be a specified entity; or
- (b) a forfeiture order is made under section in relation to the property.

Appeal

15. The Attorney General or a person whose property is subject to a direction may appeal to the Court of Appeal against a decision made by the Court under this Division.

Third parties may apply for relief

16. (1) A person, other than the person who owns or controls the property, who claims an interest in property that is subject to a direction under section 12 may apply to the Court for an order under section 17.

(2) The person must give written notice of the application to the Attorney General, who is a party to any proceedings on the application.

Court may grant relief to third party

17. (1) Subsection (2) applies if:

- (a) a person makes an application under section 16; and
- (b) the Court is satisfied that the person's claim to the interest is valid.

(2) The Court must make an order:

- (a) declaring the nature, extent, and value of the person's interest in the property; and
- (b) declaring that the interest is no longer subject to the order under section 12; and
- (c) if the interest is held by the Administrator:
 - (i) directing the Administrator to transfer the interest to the person; or
 - (ii) declaring that there is payable by the Administrator to the person an amount equal to the value of the interest declared by the Court.

(3) However, the Court may, if it thinks fit, refuse to make an order if it is satisfied that:

(a) the person was knowingly involved in any way in the carrying out of the terrorist acts that are the basis of the designation of the entity as a specified entity, or is an entity that is wholly owned or effectively controlled, directly or indirectly, by the specified entity; or

(b) if the person acquired the interest at the time of or after the designation of the entity as a specified entity, the person did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to a direction under section 12.

Further provisions on management of property of specified entities

18. (1) The Administrator may do anything that is reasonably necessary to preserve any property that is subject to a direction under section 12, and, for that purpose:

(a) may do anything in relation to the property that its owner could do; and

(b) may do so to the exclusion of the owner.

(2) The Administrator is to be paid out of the property the reasonable costs, charges and expenses incurred in connection with the performance or exercise by the Administrator of functions, duties or powers under the direction.

(3) An authority that administers a law of Vanuatu that provides for the registration of title to, or charges over, property of a particular kind may, on application by the Administrator, record on a register kept under that law the particulars of the direction under section 12 that applies to property of that kind.

(4) If particulars referred to in subsection (3) are recorded, a person who subsequently deals with the property is taken, for subsection (5), to have notice of the direction at the time of the dealing.

(5) If a person knowingly contravenes the direction, the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 10 years or a fine of not more than VT 50 million, or both.

(6) If the property is disposed of, or otherwise dealt with, in contravention of the direction, the Attorney General may apply to the Court for an order setting aside the disposition or dealing.

Division 2 – Forfeiture

Application for forfeiture order

19 (1) The Attorney General may apply to the Court for a forfeiture order against terrorist property.

(2) The Attorney General must:

(a) name as respondents to the application only those persons who are known to own or control the property the subject of the application; and

(b) give no less than 14 days' written notice of the application to each respondent in the manner directed by the Court.

(3) The Court may, at any time before the final determination of the application, make orders for:

(a) service of the application on any person whom the Court thinks has an interest in the property; and

(b) publication of notice of the application.

(4) Any person who claims an interest in the property may appear and present evidence at the hearing of the application.

Making forfeiture order

20. (1) If the Court is satisfied, on the balance of probabilities, that the property the subject of the application is terrorist property, the Court must order that the property be forfeited to the State.

(2) If the Court is satisfied that a person mentioned in section 19(2)(a) or 19(3)(a):

(a) has an interest in the property the subject of the application; and

(b) has exercised reasonable care to ensure that the property is not terrorist property; and

(c) is not a member of a specified entity;

the Court must order that the interest is not affected by the order and declare the nature and extent of the interest.

(3) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.

(4) If the Court refuses to make a forfeiture order, the Court must make an order that describes the property and declare that it is not terrorist property.

Effect of forfeiture order

21. (1) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the State.

(2) If the Court makes a forfeiture order against registrable property:

(a) the order vests the property in the State in equity, but does not vest it in the State at law until the applicable registration requirements have been complied with; and

(b) the State is entitled to be registered as owner of the property; and

COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME [CAP. 313]

(c) the Attorney General may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the State as owner, including the execution of any necessary instrument; and

(d) the Attorney General may do anything necessary or convenient to give notice of, or otherwise protect, the State's equitable interest in the property; and

(e) anything done by the Attorney General under paragraph (d) is not a dealing for subsection (3)(a).

(3) If the Court makes a forfeiture order against property (including registrable property):

(a) the property must not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the State, before 6 months after the forfeiture order was made; and

(b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Attorney General directs, 6 months after the forfeiture order was made.

Voidable transfer

22. The Court may:

(a) before making a forfeiture order; or

(b) in the case of property in respect of which a restraining order was made, when the order was served in accordance with section 54 of the Proceeds of Crime Act [Cap. 284],

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection of third parties

23. (1) A person who claims an interest in property that has been forfeited and who has not been given notice under section 19(2)(a) or 19(3)(a) may apply to the Court, within 6 months after the forfeiture order was made, for an order under subsection (4).

(2) The person must give reasonable written notice of the application to the Attorney General.

(3) The Attorney General:

(a) is a party to the proceedings in an application under subsection (1); and

(b) may make an application under subsection (1) for a person.

(4) If a person applies to the Court for an order about the person's interest in property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied in accordance with section 20(2).

(5) An appeal lies to the Court of Appeal from an order under subsection (4).

Return of property

24. (1) The Attorney General must, on application by a person who has obtained an order under section 23(4), if the period for appeals has expired and any appeal from that order has been determined or has lapsed:

(a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or

(b) if the interest in the property is no longer vested in the State, pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.

(2) Subsection (1) does not apply to any property returned, or amount paid, to the person under section 17.

Appeal

25. The Attorney General or a person affected by a decision made by the Court under this Division may appeal to the Court of Appeal against the decision.

Division 3 – Disclosure of information by financial institutions

Disclosures relating to terrorism

26. (1) A financial institution must immediately report to the Unit the existence of any property in its possession or control:

(a) that is owned or controlled, directly or indirectly, by or for a specified entity, including property derived or generated from that property; or

(b) for which there are reasonable grounds to suspect is property of a kind mentioned in paragraph (a).

(2) The Unit may disclose to a law enforcement agency or a supervisory body, in or outside of Vanuatu, any information it has about any property of the kind mentioned in subsection (1) if the Unit thinks the information would be relevant to the law enforcement agency or the supervisory body.

(3) Information may be given under subsection (2) subject to any conditions that the Unit determines.

(4) A financial institution must immediately report to the Unit every dealing that occurs in the course of its activities and for which there are reasonable grounds to suspect is related to the commission of a terrorist act.

(5) No civil or criminal proceedings lie against a person for making a disclosure in good faith under this section.

COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME [CAP. 313]

(6) Nothing in this section requires a lawyer or notary to disclose information which is subject to legal professional privilege.

(7) A person who receives information under this section, must not disclose the information or its source except:

(a) for the purposes of:

(i) the enforcement of this Act or any other prescribed Act; or

(ii) the detection, investigation or prosecution of an offence under this Act or any other prescribed Act; or

(iii) providing assistance under the Extradition Act [Cap. 287] or the Mutual Assistance in Criminal Matters Act [Cap. 285]; or

(b) in accordance with an order of a court.

(8) If a financial institution contravenes subsection (1) or (4), the financial institution is guilty of an offence punishable on conviction by a term of imprisonment of not more than 10 years or a fine of not more than VT 50 million, or both.

(9) A report by a financial institution:

(a) may be given orally, including by telephone, but a written report which may be given by way of fax or electronic mail must be prepared within 24 hours after the oral report was given; and

(b) must contain such details as specified in writing by the Unit; and

(c) must contain a statement of the reasons for making the report; and

(d) must be signed or otherwise authenticated by the person making the report.

(10) In this section, “financial institution”, “law enforcement agency”, “supervisory body” and “Unit” have the same meaning as in the Financial Transactions Reporting Act [Cap. 268].

PART 4 – COUNTER TERRORISM CONVENTIONS

Terrorist bombing offences

27 (1) Subsection (2) applies to an action that is intended by a person:

(a) to cause death or serious bodily injury; or

(b) to cause extensive damage to a place mentioned in subsection (2)(a) or (2)(b), a facility mentioned in subsection (2)(c) or a system mentioned in subsection (2)(d), if the damage results in or is likely to result in major economic loss.

(2) The person must not unlawfully and intentionally deliver, place, discharge or detonate an explosive or other lethal device in, into or against:

(a) a part of a building, land, street or waterway or other location that is accessible or open to members of the public, whether continuously, periodically or occasionally, including a commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place; or

(b) a facility or conveyance that is used or occupied, in connection with his or her official duties, by:

(i) a representative of any Government; or

(ii) the Head of State of any country; or

(iii) the Prime Minister or a Minister of any country; or

(iv) a member of the legislature of any country; or

(v) a judge of any country; or

(vi) an official or employee of a Government or public authority or an inter-governmental organisation; or

(c) a facility, conveyance or instrumentality, whether public or privately owned, that is used in or for a publicly available service for the transportation of persons or cargo; or

(d) a publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, energy, fuel or communications.

(3) If a person contravenes subsection (2), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 25 years or a fine of not more than VT 125 million, or both.

Participation in organised criminal group

28. (1) A person must not participate (whether as a member, associate member or prospective member) in an organised criminal group, knowing that it is an organised criminal group:

(a) knowing that his or her participation contributes to the occurrence of transnational criminal activity; or

(b) reckless as to whether his or her participation contributes to the occurrence of transnational criminal activity.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

(3) A group of people is capable of being an organised criminal group for the purposes of this section whether or not:

(a) some of them are subordinates or employees of others; or

(b) only some of the people involved in it at a particular time are involved in the planning, arrangement or execution at that time of any particular action, activity, or transaction; or

(c) its membership changes from time to time.

Offences against internationally protected person

29. (1) person must not intentionally:

(a) commit murder, kidnapping or any other attack on the person or liberty of an internationally protected person; or

(b) commit a violent attack on the official premises, private accommodation or means of transport, of an internationally protected person, likely to endanger that person or that person's liberty; or

(c) threaten to commit an attack.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

Offence of taking a hostage

30. (1) A person must not:

(a) seize or detain another person; and

(b) threaten to kill, injure or continue to detain the other person;

with intent to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of the other person.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

Offences relating to nuclear material

31. (1) A person must not knowingly import or export nuclear material to or from Vanuatu.

(2) A person must not knowingly transport nuclear material:

(a) over the territory of Vanuatu; or

(b) through any of its seaports or airports.

(3) A person must not knowingly transport nuclear material between 2 places in Vanuatu, whether or not through international waters or airspace.

(4) If a person contravenes subsection (1), (2) or (3), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 25 years or a fine of not more than VT 125 million, or both.

Other offences relating to nuclear material

32. (1) A person must not intentionally:

(a) receive, possess, use, transfer, alter, dispose of or disperse nuclear material in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property; or

(b) steal nuclear material; or

(c) embezzle or fraudulently obtain nuclear material; or

(d) demand nuclear material by threat or use of force or any other form of intimidation; or

(e) threaten:

(i) to use nuclear material to cause death or serious injury to any person or substantial damage to any property; or

(ii) to steal nuclear material to compel a person, state or an international organisation to do or refrain from doing any act.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 25 years or a fine of not more than VT 125 million, or both.

Offence of hijacking

33. (1) Subject to subsections (2) and (3), a person on board an aircraft in flight must not unlawfully, by the use of force or by threats of any kind, seize the aircraft or exercise control of it, whether the aircraft is in Vanuatu or not.

(2) Proceedings may be brought for an offence under subsection (1) only if:

(a) the offence is committed on board an aircraft registered in Vanuatu; or

(b) the aircraft on board which the offence is committed lands in Vanuatu's territory and the alleged offender is on board; or

(c) the offence is committed on board an aircraft leased without crew to a lessee who has his or her principal place of business in Vanuatu or, if the lessee has no principal place of business in Vanuatu, if the lessee is a permanent resident of Vanuatu.

(3) Subsection (1) applies to an act committed in relation to an aircraft used in military, customs or police service only if:

- (a) the act is committed in or over Vanuatu; or
- (b) if the act is committed outside Vanuatu, the person committing the act is a citizen of Vanuatu.

(4) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

PART 5 – PEOPLE TRAFFICKING AND PEOPLE SMUGGLING

Division 1 – People Trafficking

Offence of trafficking in persons

34. (1) A person must not engage in trafficking in a person or be involved in the arranging of trafficking in a person, knowing that the person's entry into Vanuatu or any other state is or was arranged by specified means.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 10 years or a fine of not more than VT 50 million, or both.

Offence of trafficking in children

35. (1) A person must not intentionally engage in trafficking in a person who is a child or be involved in the arranging of trafficking in a person who is a child, regardless of whether the child's entry into Vanuatu or any other state is or was arranged by specified means.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 15 years or a fine of not more than VT 75 million, or both.

Exploitation of people not legally entitled to work

36. (1) An employer who allows an unlawful employee to undertake employment in the employer's service must not take any action with the intention of preventing or hindering the employee from:

- (a) leaving Vanuatu; or
- (b) ascertaining or seeking that person's entitlement under the law of Vanuatu; or
- (c) disclosing to any person the circumstances of that person's employment by the employer.

(2) Without limiting subsection (1), the following are examples of actions of the kind mentioned in that subsection:

(a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets;

(b) preventing or hindering a person from:

(i) having access to a telephone; or

(ii) using a telephone; or

(iii) using a telephone privately; or

(iv) leaving premises; or

(v) leaving premises unaccompanied;

(c) preventing or hindering an authorised officer from entering or having access to any place or premises to which the person is entitled to have access under any law.

(3) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 10 years or a fine of not more than VT 50 million, or both.

Consent of trafficked person

37. For sections 35 and 36 it is not a defence that:

(a) the trafficked person consented to the intended exploitation; or

(b) the intended exploitation did not occur.

Protection for trafficked persons

38. (1) A trafficked person is not liable to criminal prosecution for:

(a) the act of trafficking in persons or being a party to an offence of trafficking in persons; or

(b) the person's illegal entry into Vanuatu in connection with the act of trafficking in persons if Vanuatu is the receiving country; or

(c) the person's period of unlawful residence in Vanuatu after being trafficked if Vanuatu is the receiving country; or

(d) the person's procurement or possession of any fraudulent travel or identity documents that the person obtained, or with which the person was supplied, for the purpose of entering the receiving country in connection with the act of trafficking in persons.

(2) Subsection (1) does not prevent the removal of a trafficked person in accordance with the Immigration Act [Cap. 66] or any other Act.

Division 2 – People Smuggling

Offence of people smuggling

39. (1) A person must not, in order to obtain a material benefit, engage in people smuggling either knowing or being reckless as to the fact that the entry of the person being or to be smuggled into the country is illegal.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 10 years or a fine of not more than VT 50 million, or both.

(3) Subsection (1) applies whether or not the person being smuggled enters or arrives in the receiving country.

Offence to facilitate stay of an unauthorised person

40. (1) A person must not knowingly facilitate the continued presence of an unauthorised person in a receiving country in order to obtain a material benefit.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 5 years or a fine of not more than VT 25 million, or both.

Aggravated offences

41. (1) A person commits an aggravated offence of any of the offences mentioned in subsection (2) if the person commits that offence in 1 or more of the following circumstances:

(a) the unauthorised person is subjected to torture or to any other cruel, inhuman or degrading treatment (including exploitation);

(b) the life or safety of the person being smuggled is, or is likely to be, endangered.

(2) The offences are offences against sections 39, 40 and 43.

(3) If a person commits an aggravated offence, the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 15 years or a fine of not more than VT 75 million, or both.

Protection for smuggled persons

42. (1) An unauthorised person is not liable to prosecution for an offence under this Part, by reason only of the fact that the person is the object of the following conduct:

(a) people smuggling;

(b) when committed for the purpose of enabling people smuggling, an offence under section 43;

(c) an offence under section 40.

(2) For the avoidance of doubt, nothing in subsection (1) prevents proceedings being taken against an unauthorised person for an act or omission that constitutes an offence under any other law.

Division 3 – Other offences

Offence relating to fraudulent travel documents

43. (1) A person must not knowingly, in order to obtain a material benefit:

- (a) produce a fraudulent travel or identity document; or
- (b) procure, provide or possess a fraudulent travel or identity document.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 10 years or a fine of not more than VT 50 million, or both.

Obligation on commercial carriers

44. (1) A commercial carrier must not transport a person into a receiving country if, on entry into the receiving country, the person does not have the travel documents required for lawful entry into that country.

(2) A commercial carrier is not guilty of an offence under subsection (1) if:

- (a) the commercial carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country; or
- (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
- (c) entry into the receiving country occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial carrier.

(3) A commercial carrier that is guilty of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.

(4) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a fine of not more than VT 50 million.

PART 6 – GENERAL PROVISIONS

Boarding, search and detention of craft

45. (1) An authorised officer may stop and board a craft if the authorised officer has reasonable grounds to believe the craft:

- (a) is being used to commit an offence under this Act; and
- (b) the craft is in Vanuatu or the contiguous zone of Vanuatu.

(2) The authorised officer may, when reasonably necessary for the exercise of his or her functions in connection with an offence under this Act:

- (a) direct the craft to stay where it is, or direct it to be taken to a suitable place in Vanuatu, for the purpose of search; and
- (b) search and detain the craft, anyone on it and anything on it; and
- (c) question any person on board the craft; and
- (d) require the production of any documents relating to the craft or any travel or identity documents of a person on the craft; and
- (e) take a copy of any documents produced; and
- (f) seize and detain anything found on the craft that appears to him or her to be evidence of an offence against this Act; and
- (g) remain on the craft for such period as is reasonably necessary for the purpose of boarding, searching and directing the craft or carrying out an investigation for an offence under this Act.

(3) If the craft fails to stop at the request of an authorised officer, the officer may pursue it into international waters and take any action that is reasonably necessary to stop the craft to enable it to be boarded (other than in the territorial sea of another country).

(4) The authorised officer may require the person in charge of the craft, a member of the crew or any person on board to take any action that may be directed by the officer for subsection (2)(a).

(5) The person in charge of the craft must give any authorised officer who remains on board the craft proper and sufficient food and suitable accommodation without charge.

(6) A person must comply with a direction of the authorised officer under subsection (2)(a).

(7) If a person fails to comply with a direction of the authorised officer under subsection (2)(a), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 5 years or a fine of not more than VT 25 million, or both.

Controlled delivery of property

46. (1) This section applies to an authorised officer who has reasonable grounds to believe that a person has committed, is committing or is about to commit an offence under this Act.

(2) The authorised officer may allow property, that the authorised officer reasonably suspects has been, is being or may be used to commit an offence under this Act, to enter, leave or move through Vanuatu for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.

(3) An authorised officer does not commit an offence under this Act if:

(a) the authorised officer is engaged in investigation of a suspected offence under this Act; and

(b) the offence involves property that the authorised officer reasonably suspects has been, is being or may be used to commit an offence under this Act; and

(c) the authorised officer does not take action, that the authorised officer would otherwise be required to take under this Act, for the purpose of the investigation.

Exchange of information relating to terrorist groups and terrorist acts

47. The Attorney General may disclose to the appropriate authority of a foreign country any information in his or her possession relating to any of the following:

(a) the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts;

(b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;

(c) traffic in explosives or other lethal devices by terrorist groups or persons suspected of involvement in the commission of terrorist acts;

(d) the use of communication technologies by terrorist groups;

if the disclosure is not prohibited by any provision of law and will not, in the Attorney General's view, prejudice national security or public safety.

Jurisdiction

48. Proceedings may be brought for an offence under this Act:

(a) if the act or omission:

(i) is committed in Vanuatu; or

(ii) is committed on board a craft registered in Vanuatu; or

(iii) is committed by a person who is in Vanuatu; or

(b) whether or not the act or omission constituting the offence is committed in or outside Vanuatu, if the act or omission:

- (i) is committed by a citizen of Vanuatu or a citizen of any country who is ordinarily resident in Vanuatu; or
- (ii) is committed in order to compel the Government of Vanuatu to do or abstain from doing any act; or
- (iii) is committed against a citizen of Vanuatu; or
- (iv) is committed by a person who is, after the commission of the offence, present in Vanuatu; or
- (v) is intended to be committed in Vanuatu; or
- (vi) originates in or transits Vanuatu.

Consent of Attorney General

49. (1) This section applies to proceedings for:

- (a) any offence under this Act for which jurisdiction is claimed under section 48(a)(ii), being an offence committed on board an aircraft while in flight, or a craft, elsewhere than in or over Vanuatu; or
- (b) any other offence committed outside Vanuatu.

(2) The proceedings may be instituted only with the consent of the Attorney General.

(3) Subsection (1) does not prevent the arrest, or the issue of a warrant for the arrest, of any person for any offence, or the remanding in custody or on bail of any person charged with any offence.

Restricted grounds for refusal to extradite or provide mutual assistance

50. (1) Despite anything in the Extradition Act [Cap. 287] or the Mutual Assistance in Criminal Matters Act [Cap. 285], an offence under this or any other Act, where the act or omission constituting the offence also constitutes a terrorist act, is taken, for the purposes of extradition or mutual assistance, not to be:

- (a) an offence of a political character or an offence connected with a political offence or an offence inspired by political motives; or
- (b) a fiscal offence.

(2) Despite anything in the Mutual Assistance in Criminal Matters Act [Cap. 285], no request for mutual assistance in relation to an offence under this Act may be declined solely on the basis of bank secrecy.

Liability of a company

51. (1) This Act applies to a company in the same way as it applies to an individual and a company may be found guilty of any of the offences set out in this Act, in addition to the liability of any person for the same offence.

(2) For an offence under this Act, the conduct or state of mind of an employee, agent or officer of a company is taken to be attributed to the company if that person is acting:

- (a) within the scope of the person's employment; or
- (b) within the scope of the person's actual or apparent authority; or
- (c) with the consent or agreement (express or implied) of a director, servant or agent of the company, and giving that consent is within the actual or apparent authority of the director, servant or agent.

(3) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for that intention, opinion, belief or purpose.

Appointment of Administrator

52. The Attorney General may by instrument appoint a person to administer property forfeited, or subject to an order under section 12, under this Act.

Non-liability of Administrator

53. An Administrator is not personally liable for any act done, or omitted to be done, by him or her in performing the Administrator's functions under this Act.

Regulations

54. The Minister may 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.

SCHEDULE (Section 2)

COUNTER TERRORISM CONVENTIONS

1 Convention on Offences and certain Other Acts committed on Board Aircraft done at Tokyo on 14 September 1963

2 Convention for the Suppression of Unlawful Seizure of Aircraft done at The Hague on 16 December 1970

3 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971

4 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973

5 International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979

6 Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980

7 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988

8 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at the Rome on 10 March 1988

9 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988

10 Convention on the Marking of Plastic Explosives for the Purposes of Detection, done at Montreal on 1 March 1991

11 International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997

12 International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999