

**DRAFT AS AT 17 SEPTEMBER 2001**

**REPUBLIC OF VANUATU**

**BILL FOR THE  
TRADEMARKS ACT NO.                      OF 2001**

**Explanatory Note**

This note does not form part of the Bill.

The purpose of this Bill is to provide for the registration of trademarks, and to set out and protect the rights deriving from registration.

The Bill reflects international trends towards greater uniformity in the field of intellectual property law. In particular, this Bill conforms with the minimum standards and principles prescribed for trademarks in the international Agreement on Trade-Related Aspects of Intellectual Property Rights.

**Part 1 - Preliminary**

This Part contains definitions and terms that are used frequently throughout this Bill.

**Part 2 - Trademarks and Trademark Rights**

This Part explains what is a trademark and sets out the rights given by this Act to the registered owner and any authorised user of a registered trademark, such as the right to exclusive use of the trademark.

**Part 3 - Application for Registration**

**Division 1 - General**

This Division deals with the steps to take to have a trademark registered, such as who may apply and how to apply, and gives the Registrar the power to make the initial decision whether to accept the application.

## **Division 2 - Grounds for rejecting application**

This Division sets out the grounds on which the Registrar may reject an application for registration of a trademark, such as a trademark that contains material contrary to law, or that is likely to deceive or cause confusion.

## **Part 4 - Opposition to Registration**

### **Division 1 - General**

This Division deals with opposition to registration of a trademark, such as how to oppose an application for registration.

### **Division 2 - Grounds for opposing registration**

This Division sets out the grounds on which a person may object to the registration of a trademark. The grounds include the same grounds on which the application could be opposed under Part 3, as well as grounds that the trademark is similar to an existing registered trademark, the person applying for registration does not own or intend to use, the trademark or that the trademark consists of a false geographic indication.

## **Part 5 - Amendment of application for registration of a trademark and other documents**

This Part sets out how and in what circumstances an application for registration of a trademark may be amended, and deals with amendment before and after details of the application have been published.

## **Part 6 - Registration of trademarks**

### **Division 1 - General**

This Division deals with the registration of trademarks by the Registrar, how they are registered, the term of registration, and when registration ceases.

### **Division 2 - Renewal of registration**

This Division sets out what must be done to renew the registration of a trademark, including when renewal may be applied for.

#### **Part 7 - Amendment and cancellation of registration**

This Part sets out how and why particulars of registered trademarks may be amended, and registration cancelled. The grounds for cancellation include that registration was obtained by fraud or misrepresentation, any of the grounds on which registration could have been opposed.

#### **Part 8 - Removal of trademark from Register for non-use**

This Part deals with the removal of trademarks from the register on the grounds that the trademark has not been used, and sets out who may apply and how an application is opposed.

#### **Part 9 - Assignment and transmission of trademarks**

This Part deals with the assignment of registered trademarks and of trademarks whose registration has been sought, and with the registration and other recording of assignments

#### **Part 10 - Voluntary recording of claims to interests in and rights to trademarks**

This Part deals with the recording of the rights and interests that persons (other than registered owners) may have in registered trademarks or trademarks whose registration is being sought, being rights that cannot be recorded under Part 9.

#### **Part 11 - Infringement of trademarks**

This Part sets out what constitutes an infringement of a trademark, such as using a trademark that is substantially similar to a registered trademark, or using a registered trademark without the consent of the registered owner of the trademark. It also deals with how to obtain redress and relief in cases of infringement.

#### **Part 12 - Offences**

This Part makes certain types of conduct, such as falsifying a trademark and selling goods with false trademarks, offences against the Act.

#### **Part 13 - Collective trademarks**

This Part deals with collective trademarks, that is, trademarks that may be owned by members of a trade association. It provides that the Act applies to collective trademarks, subject to some changes, including that a collective trademark cannot be assigned.

#### **Part 14 - Jurisdiction and powers of courts**

This Part deals with the jurisdiction of the Supreme Court to hear and determine matters arising under the Bill. It sets out the circumstances when a person aggrieved by a decision of the Registrar may appeal to the Supreme Court, and provides a right of appeal to the Court of Appeal.

#### **Part 15 - Indigenous knowledge**

This Part provides for the protection of indigenous knowledge. It requires the Registrar to refer applications for registration of a trademark that involves an expression of indigenous culture to the Vanuatu National Cultural Council, and provides that such a trademark is not to be registered without the consent of the custom owners of the indigenous knowledge. In limited circumstances such consent is not required eg if the custom owners cannot be identified. There is also provision for payment to the custom owners of an equitable share of the benefits from the trademark.

#### **Part 16 - Administration**

This Part deals with the Registrar and the keeping of the Register of Trademarks. It provides for the Registrar to be appointed by the Public Service Commission, for the Registrar to be responsible for keeping the Register, and allows for the Register to be kept by computer.

#### **Part 17 - Miscellaneous**

This Part deals with miscellaneous matters such as an address for service, the fixing of fees for applications and other matters under the Bill, the service of documents and the making of regulations. It also deals with the repeal of the Registration of United Kingdom Trademarks Act [Cap 81], and how matters dealt with under that Act are to be dealt with under the Bill.

**Deputy Prime Minister and Minister of  
Trade Tourism and Economic Cooperation**