

DRAFT AS AT 17 SEPTEMBER 2001

REPUBLIC OF VANUATU

**BILL FOR THE
PATENTS 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 grant and registration of patents, 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, the Bill conforms with the minimum standards and principles prescribed for patents in the international Agreement on Trade-Related Aspects of Intellectual Property Rights.

PART 1 – PRELIMINARY PROVISIONS

This Part contains definitions of terms used in the Bill.

PART 2 – PATENTABILITY

This Part sets out what inventions are patentable and those that are not. To be patentable, an invention must be new, must involve an inventive step, and must be able to be made or used in an industry. The priority date for a patent is the date on which the patent application is filed, and this is the date when the protection given by a patent starts.

PART 3 – RIGHT TO OBTAIN A PATENT

This Part provides that a patent may only be granted to the inventor, the owner of the invention or the successor in title to either of them. It also sets out when the inventor must be mentioned in the application for a patent.

PART 4 – APPLICATION FOR PATENTS

This Part deals with how an application for the grant of a patent is made, and other matters related to the application process.

PART 5 – PROCEDURE FOR GRANT OF PATENT

This Part sets out the procedure that must be followed in the grant of a patent, and deals with the requirements for searches (to see whether there is any prior relevant art) and examinations of the application generally (to see whether the invention is new, involves an inventive step and is capable of industrial application) and of the specification (to see whether it complies with the Act).

PART 6 – REGISTRATION OF PATENTS

This Part provides for the duration of a patent, and for the procedure that has to be followed after the grant of a patent. The procedure includes publication of a notice of the grant, and recording details of the patent in the Register. The Part also deals with disputes about ownership of the patent.

PART 7 – RIGHTS OF OWNER OF PATENT

This Part provides that the owner of a patent has the exclusive right to exploit the invention. These rights can be assigned or made subject to licensing contracts.

PART 8 – ASSIGNMENT AND JOINT OWNERSHIP

This Part provides for the assignment of patent applications and patents, and states that it does not affect the transmission of rights in an application or in a patent. It also deals with the rights of joint owners.

PART 9 – LICENCES

This Part provides for licensing which is of two types –licences of right and compulsory licenses. Also included in this Part are provisions for the use of patented inventions for the services of Government and an owner's entitlement to remuneration for the use of patents.

PART 10 – SURRENDER AND REVOCATION OF PATENTS

This Part sets out the circumstances in which a patent can be surrendered by the owner or revoked by the Registrar.

PART 11 – ACTS OF INFRINGEMENT

This Part sets out what acts constitute the infringement of an owner's or licensee's rights in a patent, and deals with proceedings for infringement of patents, and appeals.

PART 12 – INDIGENOUS KNOWLEDGE

This Part provides for the protection of indigenous knowledge. It requires the Registrar to refer applications for grant of a patent that is based on, arose out of, or incorporates elements of, indigenous knowledge to the Vanuatu National Cultural Council, and provides that such a patent is not to be granted 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 patent.

PART 13 – REGULATIONS AND OFFENCES

This Part gives the Minister power to make regulations for the purposes set out in the Part. It also sets out what are offences under the Bill, such as using a patented invention without the consent or authority of the owner.

PART 14 – ADMINISTRATION

This Part provides for matters relating to administration. It includes provisions for the appointment of a Registrar and establishment of the Register of Patents.

PART 15 – MISCELLANEOUS

This Part makes contains provisions dealing with protection of the Government, its officers and examiners, extensions of time, repeal and savings and commencement of the Act.

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